

Agency 110

Kansas Department of Commerce

Editor's Note:

Effective July 1, 2003, Executive Reorganization Order No. 30 separated the Kansas department of commerce and housing into the Kansas department of commerce and the Kansas department of housing. Except with respect to the powers, duties, and functions that are transferred by this order to the Kansas development finance authority or to the division of housing within the Kansas development finance authority, the department of commerce established by this order shall be the successor in every way to the powers, duties and functions of the department of commerce and housing in which such powers, duties and functions were vested prior to the effective date of this order.

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Article 1.—VENTURE CAPITAL COMPANY CERTIFICATION

110-1-1. Application process. (a) Application to become a certified Kansas venture capital company shall be made upon the application form furnished by the secretary of the department of commerce.

(b) Each application form shall be signed by an

authorized officer, or partner, and shall contain, as a minimum, the following information:

- (1) the full, legal name of the company;
- (2) the address of the applicant's principal office for the state;
- (3) the names and addresses of the applicant's directors, officers, general partners and managing partners;
- (4) a certified copy of the certificate of incor-

poration and articles of incorporation, or a certified copy of the certificate of formation of a limited partnership, or trust documents, or other evidence that the company is organized or existing under the laws of Kansas;

(5) adequate proof of a minimum level of equity capitalization of \$1,500,000 as required by K.S.A. 1986 Supp. 74-8306(b), as amended by L. 1987, Chapter 320, Section 3, and the level of capitalization the company expects to qualify for tax credits through cash investment in the venture capital company within the current calendar year. The cash investment shall be in the form of money or the equivalent of money. "Equivalent of money," for the purpose of cash investment in a certified Kansas venture capital company, shall mean instruments which are immediately convertible into U.S. currency of a readily determinable amount and which have equal worth as U.S. currency including checks, cashier's checks, money orders, and certificates of deposit with a term of 90 days or less;

(6) the business history of the applicant; and

(7) a statement of assurances which provides that:

(A) the applicant's purpose is to encourage and assist in the creation, development, and expansion of Kansas businesses and to provide maximum opportunities for the employment of Kansans;

(B) the applicant will disclose to all investors that the state of Kansas can not be held liable for damages to an investor in a certified venture capital company as provided in K.S.A. 1986 Supp. 74-8311;

(C) the applicant will comply with all requirements of the Kansas venture capital company act, including the filing of annual reports.

(c) If an application is incomplete, the applicant, upon notification by the department, shall submit the required information within 10 working days. If the required information is not received within this time period, the application for certification shall be refused. Upon refusal of certification, a subsequent application for certification may be submitted. (Authorized and implementing K.S.A. 1986 Supp. 74-8305, effective May 1, 1987, amended, T-88-53, Jan. 1, 1988; amended May 1, 1988.)

110-1-2. Annual report. (a) To determine program compliance and status for continuing certification, each certified Kansas venture capital

company shall report annually to the secretary on forms provided by the department. Information reported shall include as a minimum:

(1) the name, address, and taxpayer identification number of each investor who has invested in that company and amounts invested by each;

(2) the name, address and taxpayer identification number of each taxpayer who acquires by transfer the income tax credits from investors exempt from income taxation;

(3) the name and location of each business in which the company has invested and the type and amount of investment. The names of the business owners shall be provided if required to determine their qualification for equity or tax credit purposes;

(4) the number of jobs created or preserved in each business; and

(5) a certification that all businesses in which the company has invested are eligible in accordance with K.S.A. 1986 Supp. 74-8307(d), as amended by L. 1987, Chapter 319, Section 3, if required to determine qualification for equity or tax credit purposes.

(b) The cost of the annual review for each Kansas venture capital company shall be \$100. The fee shall be paid by the Kansas venture capital company upon submission of the annual report to the secretary. (Authorized by and implementing K.S.A. 1986 Supp. 74-8305; effective May 1, 1987; amended, T-88-53, Jan. 1, 1988; amended May 1, 1988.)

Article 2.—LOCAL SEED CAPITAL POOL CERTIFICATION

110-2-1. Application process. (a) Application to become a certified Kansas local seed capital pool shall be made upon the application form furnished by the secretary of the department of commerce.

(b) Each application form shall be signed by an authorized officer or partner, and shall contain, as a minimum, the following information:

(1) the full, legal name of the company;

(2) the address of the applicant's principal office in the state;

(3) the names and addresses of the applicant's directors, officers, general partners or managing partners;

(4) a certified copy of the certificate of incorporation and articles of incorporation, or a certified copy of the certificate of formation of partnership;

(5) adequate proof of a minimum level of \$200,000 capitalization as required by L. 1987, Chapter 365, Section 2(b) and the level of capitalization the company expects to qualify for tax credits;

(6) the source of money necessary to administer and operate the pool;

(7) the business history of the applicant; and

(8) a statement of assurances which provides that:

(A) the applicant's purpose is to encourage and assist in the creation, development, and expansion of Kansas businesses and to provide maximum opportunities for the employment of Kansans by making seed capital available to Kansas businesses;

(B) the funds invested by the local seed capital pool will be invested at 100 percent in Kansas businesses;

(C) the company will operate under the definition of a local seed capital pool in L. 1987, Chapter 365, Section 1(c);

(D) the public funds invested in a local seed capital pool will have a senior position to any private cash investment and that each cash dollar of public investment will be matched by at least two dollars of private cash investment; and

(E) the applicant will disclose to all investors that the state of Kansas can not be held liable for damages to an investor in a local seed capital pool, as provided in L. 1987, Chapter 365, Section 6.

(c) If an application is incomplete, the applicant, upon notification by the department, shall submit the required information within 10 working days. If the required information is not received within this time period, the application for certification shall be refused. Upon refusal of certification, a subsequent complete application for certification may be submitted. (Authorized by and implementing L. 1987, Ch. 365, Sec. 2; effective, T-88-53, Jan. 1, 1988; effective May 1, 1988.)

110-2-2. Annual report. (a) To determine program compliance and status for continuing certification, each certified Kansas local seed capital pool shall report annually to the secretary on forms provided by the department. Information reported shall include, as a minimum:

(1) the name, address, and taxpayer identification number of each taxpayer who has invested in the pool and amounts invested by each;

(2) the name and location of each business in which the pool has invested and amount and use of the investment; and

(3) an estimate of the number of jobs created or preserved in each business.

(b) The cost of the annual review for each certified Kansas local seed capital pool shall be \$100. The fee shall be paid by the seed capital pool upon submission of the annual report to the secretary. (Authorized by and implementing L. 1987, Ch. 365, Sec. 2; effective, T-88-53, Jan. 1, 1988; effective May 1, 1988.)

Article 3.—KANSAS PARTNERSHIP FUND PROGRAM

110-3-1. Application criteria. Each application for a loan through the Kansas partnership fund shall be reviewed and evaluated by the secretary of commerce. Unless waived by the secretary, each application shall provide sufficient information to document:

(a) The applicant's need for economic development;

(b) the number of new, permanent, private sector jobs to be created by the project;

(c) the projected impact of resulting business activity on the area, including new tax revenues to the borrower, and the availability of that revenue to help repay the program loan;

(d) the estimated cost based on an engineering or other reliable estimate of the complete project to be funded by the loan;

(e) the basis of the applicant's need for a loan from the State, including evidence that other financing options have been investigated and either are not readily available or will not cover total project costs;

(f) the availability of other funds to adequately finance any related improvement or service incidental to the project, and to finance any part of the project costs not covered by the loan;

(g) the applicant's total current and projected future debt obligations;

(h) the project's consistency with the applicant's comprehensive plans and with the applicant's five-year capital improvement plans; and

(i) any other information deemed pertinent by the secretary. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-2. Eligible applicants. (a) Any city or county government with legal jurisdiction over the site of a proposed infrastructure improvement, or with a properly executed interlocal agreement in effect which covers the site of a proposed infrastructure improvement pursuant to

subsection (b) may submit an application for a loan from the Kansas partnership fund.

(b) Any other local unit of government may request the county government to make an application on behalf of the local unit, subject to the following provisions:

(1) The county government shall have a properly executed interlocal agreement in effect which covers the site of the proposed infrastructure improvements.

(2) The county government shall be considered the borrower and shall be held accountable for the project accordingly. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-3. Eligible projects. (a) Each project eligible for financing under the Kansas partnership fund program shall:

- (1) Serve a specific business on a specific site;
- (2) serve a demonstrable public purpose; and
- (3) be located on public property, public easements, public right-of-ways, or shall be a project to extend any public utility service.

(b) Eligible project costs may include reasonable construction, labor, materials, engineering, architectural, land acquisition, legal and administrative costs related directly to the project. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-4. Ineligible projects. The following types of projects shall be considered ineligible for the Kansas partnership fund program:

(a) Any project which the secretary of commerce determines would cause a significant adverse competitive disadvantage to an existing enterprise in Kansas;

(b) any project which includes the relocation of an enterprise from one location in the state to another, unless approved in advance by official action of both the county commission and the city or other municipality which would be losing the enterprise; or

(c) any project directly related to a facility where games of chance are played for money or other stakes, or where wagering occurs. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-5. Terms of the program. Except as otherwise provided in a loan agreement, the Kansas partnership fund revolving loan fund pro-

gram shall make loans available under the following terms.

(a) Program loans shall not exceed the total cost of the project.

(b) Except when waived by the secretary, a local unit of government shall not have more than \$2,000,000 in total program loans outstanding at any one time.

(c) The term of program loans shall not exceed the expected life of the financed public improvement or improvements as determined by a certified professional engineer, or 15 years, whichever is less. An extended loan term beyond 15 years may be authorized by the secretary in unusual cases where a special need is demonstrated. However, any loans funded in whole or in part with bond proceeds shall be subject to the terms and conditions provided for in the bond indentures.

(d) The interest rate for new loans shall be reviewed and established annually by the secretary of commerce on January 1 of each year. The interest rate for new loans may be changed by the secretary whenever bonds are issued by the Kansas development finance authority for the purposes of the Kansas partnership fund.

(e) All loan proceeds shall be made available to the borrower incrementally on a receipts-only basis. Whenever a loan is approved, an encumbrance shall be issued for the full amount of the loan. This amount shall be set aside and then may be drawn down as eligible project cost receipts are submitted and approved. Interest shall only be due on loan amounts actually received. Any interest earnings on encumbered funds which have been set aside shall be credited to the partnership fund or designated for repayment of bonds issued for this program as needed.

(f) Any costs incurred for improvements beyond the necessary scope of a single purpose project, or associated with activities in addition to the single purpose project, shall not be considered allowable expenses under this program. In multipurpose projects, only costs that are documented by a certified professional engineer as necessary and appropriate for an eligible single purpose project shall be considered allowable expenses under this program.

(g) The first payment of loan principal and interest shall become due at a time coordinated with the loan recipient's budget cycle, but not later than 18 months after receipt of the first loan disbursement.

(h) Payments shall be due thereafter on at least

a semi-annual basis, and the payments may be adjusted so that the total of principal and interest shall be in approximately equal amounts throughout the life of the loan.

(i) A delinquency charge of 1.5% per month shall be applied to any payments more than 30 days overdue.

(j) Each borrower shall have the right to prepay loan obligations in accordance with the terms of the loan contract. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-6. Conditions of final loan approval. (a) Each prospective recipient of a Kansas partnership fund loan shall provide the following additional information before final loan approval is granted:

(1) Documentation of a firm financial commitment to locate or expand business operations by the business which would directly benefit from the proposed public improvements;

(2) evidence of local awareness of the project application, including public hearings;

(3) a description of the applicant's control of project site, including any leases, easements, covenants, or encumbrances which may affect the project;

(4) evidence of the adequacy and reliability of the dedicated source of repayment for loan principal and interest;

(5) evidence of the applicant's ability to administer the project and to comply with state loan requirements;

(6) evidence of the applicant's ability to adequately fund necessary maintenance of the improvements; and

(7) evidence of the project's compliance with applicable state laws, rules and regulations.

(b) Any information provided by the applicant or available from other sources may be considered by the secretary in granting final loan approval.

(c) Each loan shall be subject to the availability of funds. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-7. Distribution of funds by congressional district. Distribution of loans by congressional district shall be considered by the secretary in awarding loans through the Kansas partnership fund program.

(a) During the first three quarters of each fiscal year, loans shall be awarded in a manner that equalizes their distribution among congressional

districts to the extent deemed practicable by the secretary.

(b) Any loan funds still available in the fourth quarter of each fiscal year may be awarded to an applicant in any part of the state, regardless of congressional district. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-8. Program fees and administration. (a) Fees deemed necessary to help offset the costs of administering the Kansas partnership fund program may be established by the secretary, including fees or service charges for:

(1) Application reviews;

(2) loan issuance;

(3) loan audits;

(4) on-site inspections; and

(5) other similar activities.

(b) Any fees collected under subsection (a) may be used to help offset the costs of administering this program.

(c) Up to 5% of monies deposited in the Kansas partnership fund may be used to offset the costs of administering the program. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-9. Terms of suspension. (a) If a Kansas partnership fund loan recipient or pending loan recipient has failed to comply with the loan award stipulations, standards, or conditions, the following actions may be taken by the secretary, after providing written notice:

(1) The loan may be suspended in whole or in part and any further payments withheld; and

(2) the loan recipient or pending loan recipient may be prohibited from incurring additional obligations for loan funds. Only necessary and proper costs, as determined by the secretary of commerce, which could not reasonably have been avoided during the suspension period shall be allowable.

(b) Within 30 days from the date of the notice, the loan recipient or pending loan recipient shall take corrective action and provide a detailed written explanation to the secretary of commerce which describes the corrective actions taken.

(c) Within 21 calendar days of receiving the written explanation, the explanation shall be reviewed by the secretary, and a written response shall be provided to the loan recipient or pending loan recipient indicating that:

(1) Sufficient corrective action has been taken; or

(2) formal loan termination procedures will be taken under the terms of K.A.R. 110-3-10.

(e) Suspension shall be considered a temporary action pending either corrective action or termination, and therefore shall not be considered a "final" action with any right of appeal. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-10. Termination procedures. (a) Any Kansas partnership fund loan agreement may be terminated by the secretary in whole or in part at any time if a loan recipient or pending loan recipient fails in a material way to comply with the terms and conditions of a loan or to take adequate corrective actions while under a suspension.

(1) Written notice of the proposed termination shall be provided by the secretary which shall include:

(A) Notification that the loan will be terminated;

(B) an explanation of the reason or reasons for termination proceedings;

(C) the date by which the loan recipient or pending loan recipient must respond to the notification; and

(D) an explanation of the appeal procedure.

(2) The loan recipient or pending loan recipient shall have 30 calendar days from the date of the notice of proposed termination to respond in writing to the secretary before a loan is actually terminated. The response shall set forth the proposed actions to be taken by the loan recipient or pending loan recipient to prevent the proposed termination action.

(3) Within 21 calendar days following receipt of a written response or the expiration of the 30-day response time, whichever occurs first, the recipient or prospective recipient shall be notified, in writing, as to whether the secretary will proceed with termination and of the basis for this decision.

(4) Within 30 calendar days of the date of the decision, the loan recipient or pending loan recipient may file an appeal, which shall be in the form of a written resolution to the secretary of commerce adopted by the appropriate governing body.

(5) Upon the expiration of the 30-day period provided in paragraph (4):

(A) the loan may be terminated by the secretary if no additional appeal has been made; or

(B) the appeal may be reviewed and a final de-

cision may be issued by the secretary on termination.

(b) A loan may be terminated for convenience when the secretary of commerce and the loan recipient or pending loan recipient mutually agree, in writing, that any further expenditure of loan funds is not warranted or will not be beneficial for the designated project. In such cases, the loan may be terminated in whole or in part, and the following conditions shall apply.

(1) The loan recipient or pending loan recipient shall not incur any new obligations for the loan funds after the effective date of termination and shall cancel as many outstanding obligations as possible.

(2) Full credit shall be allowed for any non-cancellable obligations properly incurred prior to termination.

(3) An agreement between the secretary of commerce and the loan recipient or pending loan recipient shall be reached regarding:

(A) the effective date of termination;

(B) in the event of partial termination, the portion to be terminated; and

(C) all other termination conditions.

(c) Upon formal termination of any loan, an encumbrance cancellation shall be issued by the secretary in the amount of any unused loan funds.

(d) The loan recipient or pending loan recipient shall be responsible for all necessary and appropriate actions to allow the secretary of commerce to properly document formal loan termination.

(e) Upon termination, the loan may be foreclosed and any loan principal and accrued interest may be declared to be payable on demand. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2; effective Feb. 27, 1989.)

110-3-11. Repayment assurances. (a) Any applicant may be required by the secretary to levy an annual property tax sufficient to pay the loan principal and interest, which annually may be reduced by non-property tax revenue sources that may be lawfully available for loan repayment.

(b) Delinquent loan repayments shall be collected by deducting the delinquent amount from payments made by state agencies to the local governmental entity that is delinquent in its loan repayment.

(c) If a loan recipient is more than six months delinquent with any scheduled loan repayment, foreclosure proceedings shall be initiated by the secretary in accordance with the terms of any loan

contract made under this program. Foreclosure actions may include the seizure of any public improvements or property paid for with partnership fund loan proceeds. All loan amounts and accrued interest outstanding may be declared to be payable on demand. (Authorized by and implementing L. 1988, Ch. 394, Sec. 2-3; effective Feb. 27, 1989.)

Article 4.—INVESTMENTS IN MAJOR PROJECTS AND COMPREHENSIVE TRAINING (IMPACT) ACT

110-4-1. Definitions. As used in these regulations, and for purposes of administering the IMPACT act, the following terms shall have the following meanings: (a) “Existing job” means a job of an employer meeting the following criteria:

(1) Has the same or similar description, or involves performing the same or a similar function as that for a job being created by that employer; and

(2) was filled or in use within the 18 months before the date of filing an application with the secretary for funding from the IMPACT program services fund, unless the job was lost due to an act of God and the secretary finds that the IMPACT program or project will be a major factor for the Kansas basic enterprise to remain in Kansas.

(b) “IMPACT act” means K.S.A. 74-50,102 through 74-50,112, and amendments thereto.

(c) “Maximum funding amount” means the maximum dollar amount for which a qualified project would be eligible under the IMPACT act, assuming that sufficient funds exist to fund the maximum dollar amount permitted for all qualified projects as determined by the secretary according to K.A.R. 110-4-2(c).

(d) “MPI” means major project investment.

(e) “Project cost” means the total cost of a qualified project, including program costs.

(f) “Qualified project” means any project described in an application that has been determined by the secretary to be complete, in compliance with the funding limitations set forth in the IMPACT act, and qualified for funding from the IMPACT program services fund.

(g) “Secretary” means the secretary of commerce and housing. (Authorized by and implementing K.S.A. 2000 Supp. 74-50,104; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992;

amended Aug. 29, 1997; amended, T-110-5-31-01, May 31, 2001; amended Sept. 21, 2001.)

110-4-2. Review standards and priorities for approval of proposed agreements; limits on program costs and on project and program size. (a) Each proposal for an agreement concerning a SKILL project or a combined SKILL project and financial assistance through an MPI shall be submitted jointly by an employer and an educational institution to the secretary. Each proposal for an agreement concerning only financial assistance through an MPI shall be submitted by an employer to the secretary. Each proposal shall be submitted as an application in the form provided by the secretary or in such other form as is sufficient to provide the information required to be provided under this regulation. Each proposal shall include the following, as applicable:

(1) general information, as follows:

(A) the employer’s name;

(B) the employer’s address;

(C) the name and title of the employer’s designated contact person;

(D) the telephone number of the employer’s contact person;

(E) the employer’s federal taxpayer identification number, or social security number;

(F) a description of the employer’s business operation;

(G) the employer’s standard industrial classification designation, as established by the executive office of the president, office of management and budget;

(H) information demonstrating the impact of the proposed project on the local economy; and

(I) a summary of the employer’s business plan relating to the project;

(2) for any proposal that includes a SKILL project, information relating to the new jobs and the proposed training program, as follows:

(A) the job title and a description or the classification of each type of new job;

(B) the number of trainees per job title or classification;

(C) the anticipated hiring schedule for each classification;

(D) the number of hours of instruction for each trainee;

(E) a description of the training or instruction to be provided to each trainee;

(F) the location of training;

(G) the anticipated starting and ending dates for training;

(H) the expected longevity of each new job;

(I) the wage scale applicable to each new job;

(J) a description of the benefits package applicable to each new job;

(K) if the project is for an existing Kansas facility, the current employment level at that facility for each job description and the employment level at that facility for each job description 18 months prior to the date of the application;

(L) the estimated amount of gross wages and withholding tax of all new jobs created under the project over a 10-year period from the date the first new job is filled and the raw data, details of calculations, and the assumptions used in determining such gross wages and withholding tax;

(M) the educational institution's name;

(N) the educational institution's address;

(O) the name and title of the educational institution's designated contact person; and

(P) the telephone number of the educational institution's contact person;

(3) for any proposal that includes a SKILL project, information relating to the project budget and costs, as follows:

(A) salaries of instructors, including the number of hours of instruction and hourly rates;

(B) costs of adult basic education and job-related instruction;

(C) costs of vocational and skill-assessment services and testing;

(D) costs for lease of training equipment, including the costs of installation;

(E) costs to the educational institution for purchase of training equipment, including the costs of installation;

(F) costs of training materials and supplies;

(G) administrative expenses of the educational institution;

(H) costs of subcontracted services with educational institutions, federal, state, or local agencies, vendors or consultants;

(I) costs of contractual or professional services;

(J) training curriculum planning and development costs;

(K) costs of textbooks, manuals, audio-visual, or other training aids;

(L) travel expenses of trainers or trainees;

(M) costs of temporary training facilities;

(N) the amount, if any, of tuition, student fees, or special charges included in the cost of the project;

(O) the raw data, details of calculations, and assumptions used in determining the project budget and costs;

(P) the total estimated costs for the project;

(Q) the amount of project costs proposed to be paid by the employer, by the educational institution, by federal, state, or other public or private grants; and

(R) the amount of project costs requested to be paid from the IMPACT program services fund;

(4) for any proposal that includes a request for financial assistance through an MPI, information relating to the financial assistance requested as follows:

(A) an itemization of the business costs to be defrayed with the financial assistance, and the estimates, raw data and method of determining such business costs;

(B) a draw schedule setting forth each date on which the financial assistance provided through an MPI will be needed and the amounts needed on each date;

(C) background information relating to the undertaking and an explanation of how the financial assistance provided through an MPI will contribute to the relocation of the employer in the state, the location of the employer into the state, or the creation of new jobs within the state; and

(D) if the proposal includes only a request for financial assistance through an MPI, an explanation of the training or education programs to be undertaken or funded by the employer for its employees each year during the term of the agreement, with evidence demonstrating that the employer will meet the minimum training and education requirement set forth in K.S.A. 1996 Supp. 74-50,106(d)(1), and amendments thereto; and

(5) for all proposals, any other information deemed necessary by the secretary.

(b) Each application shall be reviewed by the secretary for completeness and compliance with the funding limitations set forth in the IMPACT act. Additional data may be requested by the secretary to verify the accuracy and completeness of the information set forth in an application. The review of each application shall be completed by the secretary within 30 days of the date a complete application is filed. Any project described in an application determined by the secretary to be complete and in compliance with the funding limitations set forth in the IMPACT act shall be considered to be a "qualified project."

(c) (1) The best method of funding the qualified projects shall be determined by the secretary and the funding requirements of part or all of two or more qualified projects may be pooled to facilitate the issuance of bonds by the Kansas development finance authority. One or more qualified projects may be funded from amounts on deposit or anticipated to be on deposit in the IMPACT program services fund that are not required to be used to pay program costs for other qualified projects.

(2) The maximum funding amount for any qualified project may be funded in more than one increment as may be necessary to accommodate the needs, funding resources, and limitations of the IMPACT program. However, the sum of these increments shall not exceed the maximum funding amount for the qualified project. The determinations by the secretary as to whether a qualified project will be funded in increments and the amount of such increments shall be made on the basis of the considerations listed in K.A.R. 110-4-2(d).

(d) The following factors shall be used to determine whether a qualified project should be funded and the amount of such funding. If two or more qualified projects compete for limited funds, these same factors shall be applied to determine the level of funding for each project:

(1) the per capita cost of training expenses to be funded for the IMPACT program services fund;

(2) the amount of funds used to pay project costs from sources other than funds from the IMPACT program services fund;

(3) the local economic needs and the impact of the project, including current local employment conditions, resultant new economic activity, the project schedule, leveraging of other resources, beneficial impact on the tax base and project feasibility, as well as the probability that the project will accomplish the projected benefits;

(4) the quality of jobs to be created, with priority given to those full-time jobs that have a higher wage scale, higher benefit levels, a low turnover rate, an opportunity for career development or advancement or other related factors;

(5) the extent to which the project is being coordinated with other projects of that applicant or other applicants to be funded from the IMPACT program services fund. Priority shall be given to projects that are able to share training facilities,

instructors, training equipment, and other program services;

(6) the extent to which the project or components of the project do not duplicate existing training resources;

(7) the extent to which the project utilizes funds in the most efficient and effective manner to train employees. Each proposal that includes a SKILL project shall demonstrate that a reasonable effort has been made to investigate alternate training methods and has selected the most efficient and effective method of training;

(8) the extent to which funding from the IMPACT program services fund is essential to the training of the employees, the creation of the new jobs, or both;

(9) the extent to which the employer requesting assistance can continue in business at the levels necessary to retain the new jobs created for the periods indicated in its application if provided with the requested assistance;

(10) the extent to which the employer intends to continue its operations in Kansas for the periods indicated in its application;

(11) if financial assistance through an MPI is requested, the extent to which the project utilizes funds in the most efficient and effective manner to defray business costs for which financial assistance is requested;

(12) the extent to which the business costs to be defrayed with the financial assistance provided through an MPI are directly related to the creation of new jobs in Kansas; and

(13) the extent to which the financial assistance provided through an MPI will confer benefits on the state, the community, local educational institutions or other persons or entities in addition to the benefits it will confer on the employer.

(e) Each qualified project which has been approved for funding by the secretary shall be submitted by the secretary within 30 days of such approval to the governor's council on work force training and investment for review and approval. No final agreement shall be approved by the secretary unless each project under the agreement has been approved by the governor's council on work force training and investment. (Authorized by K.S.A. 1996 Supp. 74-50,104, 74-50,106, and implementing K.S.A. 1996 Supp. 74-50,104, 74-50,105, 74-50,106; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997.)

110-4-3. Limit on maximum funding amount. The limitation on program costs set forth in K.S.A. 1996 Supp. 74-50,104(b), and amendments thereto, of the IMPACT act shall limit only the maximum funding amount for each qualified project and shall not limit the amount of project costs which are to be paid from sources other than the IMPACT program services fund. (Authorized by K.S.A. 1996 Supp. 74-50,104, and implementing K.S.A. 1996 Supp. 74-50,104, 74-50,105; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997.)

110-4-4. Enforcement of agreements by the secretary. Compliance with each agreement shall be enforced by the secretary. In order to facilitate enforcement by the secretary, each agreement shall either:

- (a) include the department of commerce and housing as a party to the agreement with enforcement rights; or
- (b) name the department of commerce and housing as a third party beneficiary of the agreement with enforcement rights. (Authorized by K.S.A. 1996 Supp. 74-50,104, and implementing K.S.A. 1996 Supp. 74-50,104, 74-50,105; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997.)

110-4-5. Compliance with K.S.A. 1996 Supp. 74-50,106(d), and amendments thereto.

(a) Each employer receiving financial assistance through an MPI shall comply with K.S.A. 1996 Supp. 74-50,106(d), and amendments thereto. For purposes of complying with K.S.A. 1996 Supp. 74-50,106(d)(1), and amendments thereto, the employer shall make an investment in training and education of the employer's employees in each of the employer's fiscal years during the term of the agreement. The investment in each fiscal year shall be in excess of two percent of the employer's total payroll costs for the employer's immediately preceding fiscal year.

(b) Training and education expenditures which qualify for compliance with K.S.A. 1996 Supp. 74-50,106(d)(1), and amendments thereto, shall include those expenditures made for all necessary and incidental costs of providing any of the following:

- (1) new jobs training, including training development costs;

- (2) adult basic education and job-related instruction;

- (3) vocational and skill-assessment services and testing;

- (4) training materials and supplies;

- (5) subcontracted services with educational institutions, private colleges or universities, or federal, state or local agencies;

- (6) contractual or professional services; and

- (7) wages paid to persons receiving education or training, but only for the periods during which the person is receiving classroom training. (Authorized by and implementing K.S.A. 1996 Supp. 74-50,104, 74-50,106; effective Aug. 29, 1997.)

Article 5.—KANSAS ENTERPRISE ZONE ACT

110-5-1. Definitions. As used in these regulations, and for the purposes of administering the Kansas enterprise zone act, the following definitions apply:

(a) "City" means the governing body of an incorporated Kansas municipality.

(b) "County" means the county board of commissioners.

(c) "County-wide" means within the jurisdiction of a county board of commissioners.

(d) "Local" means within the jurisdiction of a city.

(e) "Multi-county unit" means two or more counties making a united application for designation as a nonmetropolitan region.

(f) "Region" or "regional" means within the combined jurisdiction of all applicants, the minimum region being a single county. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 4(a); effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

110-5-2. Eligible applicants. Each applicant for designation as a nonmetropolitan region shall be:

- (a) a single county; or

- (b) a multi-county unit. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 4(a)(1); effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

110-5-3. Required documentation. Each application for designation of a nonmetropolitan region shall include:

- (a) the name, title, address, and telephone

number of a primary contact person for each county making application;

(b) the name, title, address, and telephone number of a primary contact person for the qualifying regional economic development organization;

(c) the name, title, address, and telephone number of a primary contact person with designated responsibility to make the required annual report to the secretary of commerce and housing as required by L. 1992, Chapter 202, Section 6(a);

(d) a list of all incorporated cities within the jurisdiction of each county making application showing the population, according to the most current census data available, of each city;

(e) a resolution by each county represented in the application stating that a regional economic development organization has been established which has a membership representative of:

(1) all geographic areas of the county; and

(2) the manufacturing businesses, non-manufacturing businesses, and retail businesses in the county;

(f) evidence of the regional economic development organization which,

(1) if the organization is incorporated, shall include:

(A) a certified copy of the articles of incorporation; and

(B) a certified copy of the bylaws; or

(2) if the organization is not incorporated, shall include:

(A) a certified copy of the statement of purpose of the organization; and

(B) a certified copy of the operating guidelines of the organization or other applicable and appropriate documentation acceptable to the secretary;

(g) a certified copy of a regional strategic plan which shall:

(1) have been developed or updated not more than three years prior to the time of submission;

(2) provide a verifiable statement of assurance that the plan was developed with broad-based citizen participation and input;

(3) have specific goals for regional economic development;

(4) have detailed implementation strategies for each identified goal;

(5) have appropriate criteria to determine the effectiveness of each strategy in attaining the stated goals;

(6) have provisions for monitoring the plan on a regular, on-going basis; and

(7) have provisions for reassessing, reevaluating, and updating the plan at intervals not to exceed three years;

(h) a resolution by each county making application which shall:

(1) state support for the scope of activities identified in the regional strategic plan;

(2) state all regional incentives to be offered;

(3) state all county-wide incentives to be offered;

(4) state a commitment to participate in offering all stated incentives;

(5) give a specific, detailed plan for notifying all eligible businesses in the county of the regional and county-wide incentives available; and

(6) request the designation and approval of a nonmetropolitan region; and

(i) a resolution from each city within the jurisdiction of each applicant having a population of 2,000 or more, according to the most current census data available, which shall:

(1) state support for the scope of activities identified in the regional strategic plan;

(2) state all regional and county-wide incentives to be offered;

(3) state all local incentives to be offered;

(4) state a commitment to participate in offering all stated incentives;

(5) give a specific, detailed plan for notifying all eligible businesses in the city of the regional, county-wide, and local incentives available;

(6) state consent to participate with the county, or counties, in a nonmetropolitan region; and

(7) request the designation and approval of a nonmetropolitan region. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 4; effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

110-5-4. Quarterly report. On or before January 15, April 15, July 15, and October 15 of each year, the Kansas department of revenue shall be given a list of nonmetropolitan regions including those which have been approved during the prior calendar quarter by the Kansas secretary of commerce and housing. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 5; effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

110-5-5. Term of designation. Upon approval of the application, a nonmetropolitan region shall be designated for a period of not more than five years. The applicant may apply for re-

newal of the designation within 60 days prior to the date of expiration. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 4(a); effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

110-5-6. Annual report requirements.

Each annual report submitted to the secretary pursuant to L. 1992, Chapter 202, Section 6, shall include:

(a) a list of regional incentives for economic development available in the region during the prior calendar year;

(b) a list for each designated county of any additional county-wide incentives for economic development available in the county during the prior calendar year;

(c) a list for each city within the jurisdiction of each designated county of any additional local incentives for economic development available in the city during the prior calendar year;

(d) the usage of each regional, county-wide, and local incentive for economic development made available in such region during the prior calendar year and showing:

(1) a description of each regional, county-wide, and local incentive;

(2) the number of times each regional, county-wide, and local incentive was used; and

(3) the fiscal impact of each regional, county-wide, and local incentive to the authorizing governing body; and

(e) any other information as required by the secretary. (Authorized by L. 1992, Chapter 202, Section 7; implementing L. 1992, Chapter 202, Section 6(a); effective, T-110-8-26-92, Aug. 26, 1992; effective Dec. 21, 1992.)

Article 6.—HIGH PERFORMANCE INCENTIVE PROGRAM

110-6-1. Clarification of selected criteria for designation of a “qualified firm.”

(a) For any firm seeking to qualify a “qualified business facility,” as defined in K.S.A. 79-32,154 and amendments thereto, for the high performance incentive program (HPIP), the qualified business facility shall satisfy one of the following conditions:

(1) The standard industrial classification (SIC) code assigned to the facility shall be under a major category of one of the SIC codes, or shall be an appropriate North American industry classifica-

tion system (NAICS) designation, as specified in K.S.A. 74-50,131 and amendments thereto.

(2) The SIC code assigned to the facility may be under any major SIC code or NAICS designation, if the facility is a headquarters or back-office operation of a national or multi-national business.

(b) An SIC designation shall be assigned by the secretary of commerce and housing to a qualified business facility, using the SIC code or NAICS designation specified for that facility by the Kansas department of human resources when appropriate. The basis for the SIC code or NAICS designation shall be the codes as set forth in K.S.A. 74-50,131 and amendments thereto.

(c)(1) The “measurement period” shall be the four-calendar-quarter interval during which the qualifying criteria in authorizing statutes and related regulations are satisfied. Any workforce training tax credit that is earned, as authorized in K.S.A. 74-50,132, and amendments thereto, shall be based on activities occurring during the measurement period.

(2) The “certification period” shall be the interval during which the qualified firm is eligible to perform the following activities:

(A) Apply to the Kansas department of revenue for a sales tax exemption certificate in connection with “qualified business facility investment,” as defined in K.S.A. 79-32,154 and amendments thereto;

(B) capture “qualified business facility investment,” in accordance with Kansas department of revenue determinations of eligibility for calculating the investment tax credit authorized in K.S.A. 79-32,160e and amendments thereto;

(C) incur the consulting costs that may be matched on a reimbursement basis from available monies in the “high performance incentive fund,” as authorized in K.S.A. 74-50,133 and amendments thereto; and

(D) receive priority consideration for other business assistance programs as authorized in K.S.A. 74-50,133 and amendments thereto.

(3)(A) Except as provided in paragraph c(4) of this regulation, the qualifying firm shall apply for a certification period after establishment of the measurement period. There shall be the following two kinds of certification periods, depending on the nature of the workforce at the qualified business facility.

(i) For a qualified business facility with a significant history of operations that precede the

measurement period, a 12-month certification period shall begin at the option of the qualified firm anytime during the calendar quarter following the end of the measurement period.

(ii) For a qualified business facility with no significant operating history before the start of the measurement period, the certification period shall begin at the onset of investment to establish the qualified business facility and shall continue for 12 months after the end of the measurement period.

(B) Except for investment projects that have already begun before the effective date of this regulation, and on which commerce and housing personnel have been working with a business over a substantial period of time, a business that is planning investment in a qualified business facility shall, before committing to the investment, demonstrate knowledge of the HPIP program by submitting a certificate of intent to invest, also known as a capital investment project description, that describes the anticipated capital investment project, on a form specified by the secretary. This project description form shall include estimated investment amounts, a projected starting and ending date, information about the current employment level and anticipated net new job creation and job retention, and a statement indicating the HPIP's level of importance in facilitating this investment.

Certification of the qualified business facility shall be contingent on documentation submitted by the business that it has met statutory criteria during the measurement period. Only the investment to which the business committed after submittal to the secretary of the capital investment project description form on which that investment is identified shall be eligible for the HPIP investment tax credit, if all other investment eligibility requirements have been satisfied.

Certification of a business not planning capital investment shall occur after both of the following conditions have been met:

(i) The other program requirements are satisfied.

(ii) The business demonstrates prior knowledge of the program by submitting the form used for description of a capital investment project, completed except for capital investment information.

A business seeking certification in order to utilize a high performance incentive program investment tax credit that has been carried forward shall

not be required to comply with paragraph (c)(3)(B)(ii).

(4) A determination may be made by the secretary of the department of commerce and housing that it is in the best economic interests of the state to allow certification based on a promise of future performance, rather than historical accomplishments, if justified by the magnitude of potential job creation and investment and by other considerations deemed appropriate in the judgement of the secretary.

(d) All records and documentation used to support a firm's status as qualified shall be subject to audit by the Kansas department of commerce and housing. (Authorized by and implementing K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993; amended, T-110-4-25-00, April 25, 2000; amended Feb. 23, 2001.)

110-6-1a. Training and education requirement. After the "qualified business facility," as defined in K.S.A. 79-32,154 and amendments thereto, of a firm has been "qualified" by meeting the criteria outlined in K.A.R. 110-6-1, that facility shall satisfy a training and education requirement during a measurement period, as defined in K.A.R. 110-6-1(c)(1), before gaining access to program benefits. The training and education requirement shall be met by performance of one of the following activities:

(a) The facility shall participate in the Kansas industrial training, Kansas industrial retraining, or the training segment of the state of Kansas investments in lifelong learning workforce training program, in which the state provides funding to help offset the firm's costs of employee training. Participation in the workforce training program shall be ongoing before the start of the certification period, or, if participation has been terminated, that participation shall have occurred during at least three months of the measurement period.

(b) The firm shall spend at least two percent of its total payroll costs for employee training and education at the facility, exclusive of compensation paid an employee during the receipt of on-the-job training or self-training as defined in K.A.R. 110-6-3. (Authorized by K.S.A. 1999 Supp. 74-50,115, as amended by L. 2000, ch. 157, sec. 6 and K.S.A. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; implementing K.S.A. 1999 Supp. 74-50,115, as amended by L. 2000, ch. 157, sec. 6, K.S.A. 74-50,131, as amended by L. 2000, ch.

157, sec. 8, and K.S.A. 1999 Supp. 74-50,132; effective, T-110-4-25-00, April 25, 2000; effective Feb. 23, 2001.)

110-6-2. Authority for designating a qualified firm. Each firm designated as a qualified firm in compliance with K.A.R. 110-6-1 shall be certified annually to the department of revenue by the secretary of commerce and housing. (Authorized by and implementing K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993; amended, T-110-4-25-00, April 25, 2000; amended Feb. 23, 2001.)

110-6-3. Definitions. (a) A firm's "average wage for a qualified business facility" shall be computed by dividing total FTE's, as determined under subsection (g) of this regulation, into total payroll costs as defined under subsection (p) of this regulation, which total payroll costs have been paid over the same "measurement period" used under subsection (g) of this regulation to determine the FTE count. Any firm that is seeking to qualify under the alternative wage standard set out in K.S.A. 74-50,131 and amendments thereto, shall exclude from the total payroll costs any wage compensation that is paid to anyone at the qualified business facility who has a direct or indirect equity interest in the business enterprise of five percent or more.

(b) "Back-office operation" means a worksite at which the dominant business activities are ancillary processing functions that support and may improve operating efficiencies of the primary focus of the business, but that are not of themselves integral and necessary to performing the primary business activities. Each back-office operation shall also meet the "back-office" criteria specified on the HPIP form titled "qualifying as a headquarters or back-office operation of a national or multi-national corporation" and revised on 12/15/00, which form is hereby adopted by reference.

(c)(1) "Cash investment" means actual cash outlays to pay for training and education. The definition shall include any expenditure that is eligible under the Kansas industrial training, Kansas industrial retraining, or the state of Kansas investment in lifelong learning workforce training programs. In addition, this definition shall include the wages of employees who are receiving training in a classroom-type setting, but who are not producing marketable product. This definition shall include expenditures for the following:

- (A) Instructors' salaries;
- (B) travel expenses;
- (C) training manuals and textbooks;
- (D) supplies, materials, and other expenses related to curriculum planning, development, and implementation;
- (E) the wages of any regular employee during the time the employee spends training other employees; and
- (F) reimbursement of tuition and other education and training-related expenses to employees for relevant outside coursework.

(2) Compensation paid an employee who is receiving on-the-job training shall be specifically excluded from eligibility as cash investment in training and education. Also, costs of self-training during an actual production activity shall be excluded.

(3) Final authority for determining which expenditures constitute a "cash investment" in training and education shall rest with the secretary of the Kansas department of commerce and housing.

(4) Training and education costs covered by monies or grants obtained from state, federal, or other government sponsored workforce training programs shall not be included as a cash investment by the business.

(d) "Certification period" is defined in K.A.R. 110-6-1.

(e) "Commercial customer" means any customer that does not satisfy the definition of "governmental customer" under subsection (h) of this regulation and that has been assigned a federal employer identification number (FEIN).

(f) A "commitment to invest" means a written agreement concerning an investment that is signed by the company making the investment and another party and that provides that party with legally enforceable remedies if the company making the investment fails to carry out the agreement.

(g) "Full-time-equivalent employees (FTE's)" shall be computed as follows:

(1) For the "measurement period," the number of hours worked by employees who normally work fewer than 40 hours per week shall be totaled and then divided by 2,080 hours.

(2) The result shall be added to the average number of employees who normally worked 40 or more hours per week during the "measurement period."

(3) Calculation of FTE's shall include "leased

employees” as defined in subsection (k) of this regulation.

(h) “Governmental customer” means a customer that is categorized in major standard industrial classification (SIC) groups 91 through 97 or the appropriate North American industry classification system (NAICS) designation, or a customer that is categorized in major SIC groups 82 through 84 or the appropriate NAICS designation, and is funded primarily with tax dollars and is not a for-profit organization.

(i) “Gross revenues,” as used in K.S.A. 74-50,131 and amendments thereto, means the same as the common usage for that term in financial and accounting applications under generally accepted accounting principles (GAAP) financial reporting standards.

(j) “Headquarters” means a worksite where principal officers of the business are housed and from which direction, management, or administrative support of transactions is provided for a business or a division of a business. Each headquarters shall also meet the “headquarters” criteria specified on the HPIP form which is adopted by reference in subsection (b).

(k) “Leased employees,” as defined in this regulation, shall be considered employees of the qualifying business for purposes of measuring employee training and determining the number of full-time-equivalent employees at a qualified business facility, in order to calculate an average wage for that worksite.

Leased employees are those employees leased by the qualifying business from another company, or those employees who are engaged by the qualifying business under a personnel services agreement entered into with another company, regardless of whether the companies are related taxpayers as defined in K.S.A. 79-32,154 and amendments thereto.

Leased employees shall mean employees who fill positions that are one year or longer in duration and whose work duties are directed by the business for which they are producing work product, regardless of the relationship between the business for which they are working and the business from which their wages or salary is issued. If the employee is engaged by the qualifying business through a personnel services agreement with a related taxpayer, work activities may be directed by the qualifying business or the related taxpayer.

(l) “Measurement period” is defined in K.A.R. 110-6-1.

(m) Whether a business qualifies as a “multi-national corporation” shall be determined by the secretary, when a qualified business facility is attempting to qualify as a headquarters or back-office operation. However, except in unusual circumstances, a multi-national corporation means a legal entity with at least one permanent worksite in the United States and one or more additional permanent worksites established in one or more other countries, with attendant personnel and owned or leased facilities, equipment, and infrastructure, and does not mean just one or a few worksites in this country that make some international sales. Each multi-national corporation shall also meet the “multi-national corporation” criteria specified on the HPIP form which is adopted by reference in subsection (b).

(n) Whether a business qualifies as a “national corporation” shall be determined by the secretary, when a qualified business facility is attempting to qualify as a headquarters or back-office operation. However, except in unusual circumstances, a national corporation means a legal entity having multiple permanent worksites, with attendant personnel and owned or leased facilities, equipment, infrastructure, and operations covering a broad geographical area within the United States, and does not mean just one or a few permanent worksites that make sales across the country. Each national corporation shall also meet the “national corporation” criteria specified on the HPIP form which is adopted by reference in subsection (b).

(o) Each reference to codes used by the “standard industrial classification” (SIC) system in K.A.R. 110-6-1, K.A.R. 110-6-1a, K.A.R. 110-6-2, K.A.R. 110-6-3, K.A.R. 110-6-4, and K.A.R. 110-6-5 shall also refer to the codes that are used by the North American industry classification system (NAICS).

(p) “Total payroll costs” means the amount reported to the Kansas department of human resources for a qualified business facility as “total wages paid this quarter” on the “employer’s quarterly wage report and contribution return” or the “multiple worksite report” for the appropriate “measurement period.” Total payroll costs shall include overtime, bonuses, vacation and sick pay, and severance pay and shall be used for purposes of calculating the average wage for a particular qualified business facility.

(q) “Training and education” means an activity for which an employee either is paid to participate or is reimbursed for expenses incurred, or both,

and from which the firm expects to derive increased productivity or quality, or both.

(r) "Wage standard" means a derivative of the average wage information developed for the Kansas department of commerce and housing for each major two-digit SIC category, or for the appropriate NAICS designation, using all firms located within a geographical wage area that are required to provide the Kansas department of human resources with an "employer's quarterly wage report and contribution return" or a "multiple worksite report." (Authorized by K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; implementing K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8 and K.S.A. 1999 Supp. 74-50,132; effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993; amended, T-110-4-25-00, April 25, 2000; amended Feb. 23, 2001.)

110-6-4. Eligibility and application procedures for the high performance incentive fund. (a) Each firm that meets the eligibility requirements to be a qualified firm under the high performance incentive program and that meets the program's training requirement shall also be eligible for the high performance incentive fund.

(b) To apply for funds from the high performance incentive fund, each firm shall submit the following information:

(1) The firm name, address, telephone number, and designated contact person;

(2) the name of the consultant and a brief description of the consultant's qualifications;

(3) a short description of how this particular consultant was selected;

(4) disclosure of any financial or legal relationship between the consultant and the company or its principals;

(5) a brief description of the scope of the proposed consulting service, the manner in which appropriate limits for the consulting service were decided upon, the goals that have been targeted, and the benefits that are expected from the consulting activity;

(6) a timetable for completion of consulting services and a date by which realization of the benefits is anticipated; and

(7) a statement of the total cost of the consulting services, the amount of financial assistance being requested from this program, specifics of any funding assistance for consulting or training being received from other state programs, and docu-

mentation supporting the requested amount of assistance for spending that occurred during a certification period, as defined in K.A.R. 110-6-1.

(c) Each qualified firm shall submit a request for funding from the high performance incentive fund within one year of the end of the certification period in which the eligible expenditures were made, and only for certification periods ending in state fiscal years in which funding for this benefit was appropriated by the legislature. In order to allow encumbrance of funding, the qualified firm with a certification period that ends within the state's July 1 through June 30 fiscal year, that has not already submitted a request for funding, shall submit a written notice by May 1 in that fiscal year that the qualified firm intends to submit a request for funding for reimbursement associated with the certification period that ended in that fiscal year.

(d) Funding requests shall be processed in the order received, and reimbursement shall be provided to the extent that funding has been made available to the program through legislative appropriations. In no case shall reimbursement exceed 50% of the eligible expenditures, and an upper limit on the dollar amount of reimbursement for each certification shall be established by the secretary for any state fiscal year in which funding has been appropriated by the legislature.

(e) Records supporting monetary requests shall be subject to audit by the Kansas department of commerce and housing. (Authorized by K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; implementing K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8 and K.S.A. 1999 Supp. 74-50,133; effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993; amended, T-110-4-25-00, April 25, 2000; amended Feb. 23, 2001.)

110-6-5. Approval guidelines for private consultants. Each qualified firm that has satisfied the training requirement shall obtain approval from the secretary of commerce and housing for the consultant used to accelerate the qualified firm's growth. Approval shall be determined by examining materials required to be submitted under subsection (b) of K.A.R. 110-6-4. (Authorized by and implementing K.S.A. 1999 Supp. 74-50,131, as amended by L. 2000, ch. 157, sec. 8; effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993; amended, T-110-4-25-00, April 25, 2000; amended Feb. 23, 2001.)

110-6-6. Guidelines for prioritizing

business assistance programs. A list of all firms who have applied for and received designation as a qualified firm shall be compiled and maintained by the secretary of commerce and housing. This list shall be distributed quarterly within the department of commerce and housing to every division director and program manager, with the directive that listed firms shall receive priority consideration in the provision of any business assistance or program benefits. The list shall also be distributed to the directors of the Kansas technology enterprise corporation and mid american manufacturing technology center. (Authorized by and implementing 1993 SB 73, section 1 (b); effective, T-110-8-17-93, Aug. 17, 1993; effective Nov. 15, 1993.)

110-6-7. Reporting requirements for firms receiving benefits. Each firm receiving benefits under this program, including tax credits and tax exemptions, shall supply the department of commerce and housing with information on benefits applied for and approved by the department of revenue on an annual basis. (Authorized by and implementing L. 1993, Chap. 172, Sec. 1; effective Nov. 15, 1993.)

Article 7.—KANSAS COMMUNITY SERVICES PROGRAM

110-7-1 through 110-7-4. (Authorized by and implementing L. 1994, Chap. 38, Sec. 5; effective, T-110-9-1-94, Sept. 1, 1994; effective Dec. 5, 1994; revoked Sept. 28, 2001.)

110-7-5. Definitions. For the purpose of these regulations, the following terms shall have the meanings provided in this regulation unless the context clearly indicates otherwise. (a) “Department” means the Kansas department of commerce and housing (KDOCH).

(b) “Director” means the director of the community development division of the department.

(c) “Gift” means the unconditional and voluntary transfer of money or property by a donor to an entity without consideration of a business, economic, or monetary nature, except for the tax benefits conferred by the Kansas community service program act and the federal internal revenue code.

(d) “Proposal” means a written plan submitted by an organization to implement a specific project that is eligible for consideration by the department under the Kansas community service pro-

gram. (Authorized by and implementing K.S.A. 79-32,198; effective Sept. 28, 2001.)

110-7-6. Audits. An independent audit of the organization’s financial records shall accompany each proposal. Except as specified in K.A.R. 110-7-10(c), any organization that does not regularly submit to or authorize an outside audit of its budget and spending, or any newly formed organization, may submit the most current IRS 990 return in lieu of an audit if the organization obtains prior approval of the director. (Authorized by and implementing K.S.A. 79-32,198; effective Sept. 28, 2001.)

110-7-8. Review of proposals. (a) Approval or disapproval of each proposal shall include consideration of the following criteria:

(1) The organization’s demonstrated capacity to administer the project;

(2) the organization’s demonstrated fund-raising capacity;

(3) the organization’s documentation of the need for the proposed activity in the area within which the project is to be carried out; and

(4) the organization’s demonstration of the level of community support for the project.

(b) No proposal for crime prevention shall be reviewed if the proposal does not include a written endorsement from the local governing body. Other proposals with a written endorsement from the local governing body shall receive a higher priority.

(c) Each applicant shall be notified by the director, within 90 days of submission of the proposal, of the director’s decision regarding the proposal. (Authorized by and implementing K.S.A. 79-32,198; effective Sept. 28, 2001.)

110-7-9. Gifts; gift period. (a) Each proposal shall include a statement indicating that only non-cash gifts related directly to the approved project will be accepted and that acceptance of the non-cash gifts will occur within 18 months after the date of approval of the proposal by the director. To be considered “related directly,” the non-cash gift shall be actually used for, or as part of, the project. A gift received before or after this period shall not be approved for tax credits.

(b) Each person wanting a tax credit and donating a gift to an approved project shall submit a tax credit application to the department within one year of the donation of the gift. (Authorized

by and implementing K.S.A. 79-32,198; effective Sept. 28, 2001.)

110-7-10. Administration of projects. Each proposal shall include a statement indicating all of the following: (a) The organization implementing an approved project will submit quarterly reports and a final report at the end of the project.

(b) Each change in the project's approved budget will be submitted for approval by the department before taking effect.

(c) An independent audit of the project will be obtained for the project if the project utilizes more than \$100,000 in tax credits. (Authorized by and implementing K.S.A. 79-32,198; effective Sept. 28, 2001.)

Article 8.—CERTIFIED CAPITAL FORMATION COMPANIES

110-8-1. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8221(d) and (h), as amended by L. 2003, ch. 154, §76, and K.S.A. 74-8223, as amended by L. 2003, Ch. 20, §4; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-2. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74- 8221(d), as amended by L. 2003, ch. 154, §76, 74-8223, as amended by L. 2003, Ch. 20, §4, and 74-8224; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-3. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74- 8221(l), as amended by L. 2003, ch. 154, §76, K.S.A. 74-8224(f), K.S.A. 74-8225(g), as amended by L. 2003, Ch. 20, §2, K.S.A. 74-8226, as amended by L. 2003, Ch. 20, §3, and K.S.A. 74-8229; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-4. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8222, as amended by L. 2003, Ch. 20, §1, K.S.A. 74-8223(a), as amended by L. 2003, Ch. 20, §4, and K.S.A. 74-8224(d); effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-5. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74- 8222, as amended by L. 2003, Ch. 20, §1, and K.S.A. 74-8225(a)(2), as amended by L. 2003, Ch. 20, §2; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-6. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74- 8221(f), as amended by L. 2003, ch. 154, §76, and 74-8222(a), as amended

by L. 2003, Ch. 20, §1; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-8. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8225, as amended by L. 2003, Ch. 20, §2, K.S.A. 74-8227; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-9. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8225, as amended by L. 2003, Ch. 20, §2, K.S.A. 74-8226, as amended by L. 2003, Ch. 20, §3, and K.S.A. 74-8228; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-10. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8225, as amended by L. 2003, Ch. 20, §2, and K.S.A. 74-8226, as amended by L. 2003, Ch. 20, §3; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

110-8-11. (Authorized by K.S.A. 74-8229(e); implementing K.S.A. 74-8225(e), as amended by L. 2003, Ch. 20, §2; effective Dec. 12, 2003; revoked Dec. 3, 2004.)

Article 9.—SALES TAX REVENUE BONDS

110-9-1. Definitions. As used in these regulations, the following terms shall have these meanings:

(a) "Applicant" means a city in Kansas seeking to finance a redevelopment project using STAR bonds.

(b) "City" means the governing body of an incorporated Kansas municipality.

(c) "County" means any county recognized under K.S.A. 18-101 et seq., and amendments thereto.

(d) "Direct expenditures" means visitors' spending that directly supports the jobs and incomes of people and firms that deal directly with visitors brought to an area by a tourism attraction.

(e) "Direct job creation" means the establishment of any position in which a person will be employed by a business to perform duties in connection with the operation of the business on one of the following bases:

(1) A year-round, full-time basis;

(2) a part-time basis, if the person is customarily performing the duties at least 20 hours each week throughout the taxable year; or

(3) a seasonal basis, if the person performs the duties for substantially all of the season customary for the position in which the person is employed.

(f) "Eligible area" has the meaning specified in

K.S.A. 12-1770a, and amendments thereto. This term may include noncontiguous land if the secretary determines that a sufficient connection exists appropriate for the proposed project.

(g) “Enabling effects” means the pattern of business development of compatible industries in an area or region due to direct, indirect, or induced expenditures and the environmental effects of a tourism attraction.

(h) “Fixtures” means goods, as defined in the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, that have become so related to specific real property that an interest in them arises under real property law.

(i) “Indirect expenditures” means the amount of money expended in regional sectors that supply goods and services in support of the direct expenditures resulting from a tourism attraction.

(j) “Induced expenditures” means the increased sales within a region resulting from a tourism attraction.

(k) “Principal” means one or more persons with the primary responsibility for the development of a STAR bond project.

(l) “Secretary” means the secretary of the department of commerce.

(m) “STAR bonds” means sales tax revenue bonds payable from the revenue sources identified in K.S.A. 12-1774(a)(1)(D) and K.S.A. 12-1774(a)(1)(F), and amendments thereto. (Authorized by K.S.A. 2005 Supp. 74-5002r; implementing K.S.A. 2005 Supp. 74-5002r and 74-5005; effective April 21, 2006.)

110-9-2. Special bond project plan; additional documentation. Each applicant that desires to use STAR bonds to finance a special bond project in Kansas shall apply to the secretary for a determination that the project qualifies as a major commercial entertainment or tourism area. If the project is to be located in a redevelopment district that is wholly within a county but not within the geographic limits of an incorporated Kansas city, then after the governing body of the county approves the creation of the district, a city within the county shall agree by interlocal agreement to be the county’s sponsoring applicant.

(a) Each applicant shall provide the secretary with a special bond project plan prepared pursuant to K.S.A. 12-1780c, and amendments thereto. Each applicant shall also provide the following:

(1) Documentation that the city has met all resolution, hearing, and ordinance requirements;

(2) a statement on how the proposed project meets the eligibility limitations on bond authority set forth in K.S.A. 12-1770a(g), and amendments thereto;

(3) a project budget; and

(4) any other relevant information required by the secretary.

(b) The summary of the feasibility study included as part of the special bond project plan shall be prepared by an independent party with recognized expertise in preparing this type of study and shall include the following:

(1) The information required by K.S.A. 12-1770a(k), and amendments thereto;

(2) a description of any project submitted under K.S.A. 12-1771d, and amendments thereto, to satisfy the requirements of K.S.A. 12-1770a(l), and amendments thereto;

(3) a statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;

(4) a statement concerning whether a portion of the sales taxes collected pursuant to K.S.A. 12-187, and amendments thereto, is committed to other uses and unavailable as revenue for the redevelopment project. If a portion of sales taxes is so committed, the applicant shall describe the following:

(A) The percentage of sales taxes collected that is so committed; and

(B) the date or dates on which this diverted revenue can be pledged for repayment of special obligation bonds;

(5) an anticipated principal and interest payment schedule on the bonds; and

(6) a copy of the minutes of the governing body meeting or meetings of any city whose bonding authority will be utilized in the project, evidencing that a redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open public meeting.

(c) If any of the items specified in this regulation are not included, the applicant shall be notified about the items or information required to be provided to the secretary before the secretary will respond. (Authorized by K.S.A. 2005 Supp. 74-5002r; implementing K.S.A. 2005 Supp. 12-1770a, 12-1771d, 12-1780b, 12-1780c, and 74-5005; effective April 21, 2006.)

110-9-3. Certain findings; timing. If a finding by the secretary is required under K.S.A.

12-1774(a)(1)(D) and amendments thereto, the finding shall be made by the secretary within 60 days of the secretary's receipt of the information required by K.A.R. 110-9-2. A copy of this finding, when made, shall be mailed to the applicant. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 12-1770a, as amended by L. 2005, ch. 186, § 7, K.S.A. 2004 Supp. 12-1774(a)(1)(D), as amended by L. 2005, ch. 132, § 6, and K.S.A. 74-5005, as amended by L. 2005, ch. 104, § 9; effective April 21, 2006.)

110-9-4. Secretary's review. Upon completion of the secretary's review of each special bond project plan, each applicant shall receive a written response containing a determination or seeking further information. If the written response requests further information, the 60-day time frame specified in K.A.R. 110-9-3 shall exclude the period beginning on the date on which the letter requesting further information is mailed through the date on which the information is received by the secretary. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 12-1770a(g), as amended by L. 2005, ch. 186, § 7, K.S.A. 2004 Supp. 12-1774(a)(1)(D), as amended by L. 2005, ch. 132, § 6, and K.S.A. 74-5005, as amended by L. 2005, ch. 104, § 9; effective April 21, 2006.)

110-9-5. Due diligence. Before the secretary approves the use of STAR bonds to finance any special bond project, the applicant shall provide the secretary with evidence that the applicant has with due diligence explored the background and financial viability of the principals. If any principal has been convicted of a felony or a misdemeanor involving moral turpitude or business or financial improprieties, or is now or has ever been charged with or convicted of any civil or criminal offense relating to the conduct of the business of the principal or the issuance, sale, or solicitation for sale of any type of security, the applicant shall disclose this information. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 12-1774(a)(1)(D), as amended by L. 2005, ch. 132, § 6, and K.S.A. 74-5005, as amended by L. 2005, ch. 104, § 9; effective April 21, 2006.)

110-9-6. Major commercial entertainment and tourism area; criteria. The following criteria shall be utilized by the secretary to determine whether a proposed project constitutes a

major commercial entertainment and tourism area:

(a) Visitation, which shall include the following:

(1) Out-of-state visitation;

(2) visitation drawn from more than 100 miles distant from the community where the proposed project would be located; and

(3) the total annual visitation;

(b) economic impact, which shall include the following:

(1) Direct expenditures;

(2) indirect expenditures;

(3) induced expenditures;

(4) enabling effects; and

(5) direct job creation;

(c) the unique quality of the proposed project, in terms of any of the following:

(1) The national destination attraction market;

(2) a defined multistate market area;

(3) the Kansas destination attraction market;

(4) the ability of the proposed project to utilize the nature, culture, or heritage that is unique to Kansas; or

(5) the ability of the proposed project to provide Kansas with a valuable, national market brand identity;

(d) the ability of the proposed project to gain sufficient market share to meet the following conditions:

(1) Remain profitable past the term of repayment of the STAR bonds; and

(2) maintain status as a significant factor for travel decisions;

(e) integration and collaboration with other resources or businesses, as determined by any of the following:

(1) Creation of overnight stays;

(2) collaboration or competition with other available retail and destination attractions; and

(3) the ability of the proposed project to utilize the nature, culture, or heritage that is unique to Kansas;

(f) the quality of service and experience provided, as measured against national consumer standards for the specific target market; and

(g) proposed project accountability, measured according to best industry practices. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 12-1770a, as amended by L. 2005, ch. 186, § 7, K.S.A. 2004 Supp. 12-1774(a)(1)(D), as amended by L. 2005, ch. 132, §

6, and K.S.A. 74-5005, as amended by L. 2005, ch. 104, § 9; effective April 21, 2006.)

110-9-7. Audit reports. The period to be audited for the purpose of the annual audit reports shall be July 1 through the following June 30. Each audit report shall be submitted to the secretary on or before October 1 of the year in which that audited period ends. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing L. 2005, ch. 132, § 13 and K.S.A. 74-5005, as amended by L. 2005, ch. 104, § 9; effective April 21, 2006.)

110-9-8. Bond payments; subsequent special bond projects. (a) Each bond trustee shall distribute all revenues that have been pledged to pay the principal and interest on the special obligation bonds issued by a city to finance a special bond project in accordance with the provisions of the applicable bond resolution or trust indenture, upon distribution of the revenues by the Kansas department of revenue to the bond trustee.

(b) A city that has received STAR bond funding shall not receive additional STAR bond funding for any subsequent special bond project in the same redevelopment district without first receiving approval for each subsequent special bond project from the secretary. (Authorized by K.S.A. 2005 Supp. 74-5002r; implementing K.S.A. 2005 Supp. 12-1774 and 74-5005; effective April 21, 2006.)

Article 10.—LOW INCOME HOUSING TAX CREDITS

110-10-1. Selection criteria for review and award of low income housing tax credits.

(a) The following objective scoring matrix, including the following criteria and the maximum points that may be assigned to each criterion, shall be used in the review and award of low income housing tax credits authorized to the state of Kansas by section 42 of the United States internal revenue code:

Description of Criteria	Maximum Number of Points
(1) project location	50 points
(2) the housing needs characteristics for the market of the area in question	45 points

- | | |
|---|-----------|
| (3) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan and whether the project is intended for eventual tenant ownership | 80 points |
| (4) sponsor characteristics | 10 points |
| (5) whether the project is designed to serve tenant populations with special housing needs, including tenant populations of households with children and units limited to tenants 55 years and older or to tenants with special needs | 75 points |
| (6) whether the project will accept referrals of tenants who are on public housing waiting lists | 5 points |
| (7) whether the development will be located in communities that have not previously received housing tax credits or whether the developer provides an independent, site-specific market study of the community | 45 points |

(b) Each application shall be considered in relation to the other applications in each particular round of tax credit awards. (Authorized by and implementing L. 2003, Ch. 154, Sec. 103; effective, T-110-7-1-03, July 1, 2003; effective, T-110-10-8-03, Oct. 8, 2003; effective Feb. 27, 2004.)

Article 11.—KANSAS DOWNTOWN REDEVELOPMENT ACT

110-11-1. Definitions. As used in these regulations and for purposes of administering the act, the following terms shall have the meanings specified in this regulation: (a) “Act” means the Kansas downtown redevelopment act, L. 2004, ch. 112, §§ 81 through 85, and amendments thereto.

(b) “Commercial, office, residential and public use,” as that term is used in the definition of “core commercial district” in L. 2004, ch. 112, § 82(b) and amendments thereto, shall include hotels, motels, bed and breakfasts, banks, office buildings, railroad stations, public dining facilities, retail establishments, and public buildings that occupy a collective and facing frontage on one side or both sides of a street within the core commercial district.

(c) “Compact” means that the commercial, of-

fice, residential, and public structures within a proposed redevelopment area are contiguous with each other.

(d) “Department” means the department of commerce.

(e) “Investment in improvements to the real property or trade fixtures” of a structure means rehabilitation expenditures.

(f) “Rehabilitation expenditures” and “approved rehabilitation expenditures” mean investments by structure owners that are consistent with the department’s “downtown redevelopment guidelines” for the physical improvement of compact commercial, office, residential, and public use structures within a core commercial district. The department’s “downtown redevelopment guidelines,” as in effect on July 1, 2004, are hereby adopted by reference.

(g) “Residential housing” means structures within a core commercial district once used for hotels, motels, bed and breakfasts, and upstairs apartments within these structures.

(h) “Secretary” means the secretary of the department of commerce.

(i) “Trade fixtures” means machinery and equipment, communication equipment, and office equipment that can be removed from a structure without jeopardizing the structural integrity.

(j) “Unincorporated area of a county” means the portion of a county that is no longer an incorporated city but where there remains a historic or recognizable core commercial district.

(k)(1) “Vacancy rate” means the square footage of properties within a core commercial district that currently is not utilized for commercial, office, residential or public use, expressed as a percentage of the aggregate properties’ total square footage utilized for commercial, office, residential and public use. This term shall not include square footage devoted solely to storage or warehouse usage if the property owner is compensated by another for the use of the storage or warehousing square footage.

(2) The vacancy rate shall be determined by dividing the aggregate square footage of commercial, office, residential, and public use structures in the redevelopment area, excluding square footage devoted solely to storage or warehousing for a fee, that is not being utilized for ongoing business activities by the aggregate square footage of commercial, office, residential, and public use structures in the redevelopment area, including square footage devoted solely to storage or ware-

housing for a fee. (Authorized by L. 2004, ch. 183, § 7; implementing L. 2004, ch. 112, §§ 81, 82, 83, and 84; effective April 22, 2005.)

110-11-2. Application for proposed redevelopment area. (a) Any governing body may request the secretary’s approval to create a redevelopment area under the act by submitting an application on a form provided by the department.

(b) The secretary’s decision on the application and the controlling facts on which the decision is made shall be communicated in writing to the governing body within 90 days of the secretary’s decision.

(c) The secretary’s decision shall be a final agency action that is subject to review in accordance with the act for judicial review, K.S.A. 77-601 et seq., and amendments thereto. (Authorized by L. 2004, ch. 183, § 7; implementing L. 2004, ch. 112, §§ 81 and 83; effective April 22, 2005.)

110-11-3. Progress reports. (a) Each governing body whose application for a redevelopment area is approved by the secretary shall submit annual progress reports on forms provided by the department. Each report shall document and compare the progress actually made by the owners of the structures in the redevelopment area against the proposed redevelopment area plan.

(b) All new assessed valuations of structures within a redevelopment area shall be included in the next progress report submitted to the secretary under subsection (a). The governing body shall identify the affected properties and their previous and current valuations. (Authorized by L. 2004, ch. 183, § 7; implementing L. 2004, ch. 112, § 81 and L. 2004, ch. 183, § 7; effective April 22, 2005.)

Article 12.—AGRITOURISM PROMOTION ACT

110-12-1. Definitions. As used in these regulations and for purposes of administering the act, these terms shall have the following meanings:

(a) “Act” means the agritourism promotion act, K.S.A. 74-50,165 through K.S.A. 74-50,173, and amendments thereto.

(b) “Cost” means an expenditure directly related to insuring any agritourism activity.

(c) “Department” means the department of commerce.

(d) "Liability insurance" means a policy insuring against the following:

(1) Loss, expense, or liability by reason of bodily injury or death by accident, for which the insured could be liable or have assumed liability and loss; and

(2) damage to any goods on the premises of the insured, or the loss of or damage to the property of another for which the insured is liable.

(e) "Secretary" means the secretary of the department of commerce. (Authorized by K.S.A. 2004 Supp. 74-50,173 and K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,165, 74-50,166, 74-50,167, 74-50,168, 74-50,169, 74-50,170, 74-50,171, and 74-50,172, and 74-50,173; effective April 8, 2005.)

110-12-2. Registration. (a) Each provider of an agritourism activity desiring to register the activity with the secretary pursuant to the act shall provide the information requested by the department. Upon request, a registration form shall be mailed to the provider. Although no charge is made for registration, no registration shall be deemed complete until the operator provides all of the information requested by the department.

(b) If an incomplete registration form is returned to the department, a request for the missing information shall be sent to the applicant. The applicant shall have 10 business days to respond to the request. If there is no response within this period, the registration form shall be returned, and the applicant's operation shall be considered not to be registered.

(c) None of the following information from any registration form shall be disclosed by the department:

(1) The social security number;

(2) the FEIN for the business activity; and

(3) the name of the insurance company providing the activity with liability insurance, its agent, and the policy number. (Authorized by K.S.A. 2004 Supp. 74-50,173 and K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,168; effective April 8, 2005.)

110-12-3. Liability insurance; costs qualifying for tax credits. The following costs associated with liability insurance shall be eligible for the tax credits authorized by the act:

(a) The cost of a rider with a separate premium for specific risk for an agritourism activity; and

(b) the amount that an insurance agent certified on a tax credit form provided to the registered

agritourism operator by the department of revenue and filed for the operator that represents the cost of the liability insurance covering the registered agritourism activity. (Authorized by and implementing K.S.A. 2004 Supp. 74-50,173; effective April 8, 2005.)

110-12-4. Tax credits. (a) No costs of liability insurance specified in K.A.R. 110-12-3 shall be allowed for consideration for tax credits unless the registered agritourism operator or the operator's authorized attorney or insurance agent provides the department of revenue with the following information and documents:

(1) The name of the agritourism operator's liability insurance company;

(2) the liability insurance policy number;

(3) the name, complete address, and phone number of the liability insurance company's agent; and

(4) a copy of the completed tax credit form provided to the registered agritourism operator under K.A.R. 110-12-3(b).

(b) If, during the first five years that an agritourism operator is registered under the act, the secretary believes for any reason that the registered agritourism operator has not complied, or is not complying, with these regulations and through such noncompliance could have jeopardized the operator's eligibility for tax benefits under the act, all relevant information shall be forwarded by the secretary to the secretary of revenue. (Authorized by and implementing K.S.A. 2004 Supp. 74-50,173; effective April 8, 2005.)

110-12-5. New registration form. This act shall apply only to registered agritourism activities. If a registered agritourism operator changes the agritourism activities at the operator's facility, the operator shall file a new registration form for the agritourism activity with the department in accordance with K.A.R. 110-12-2. (Authorized by K.S.A. 2004 Supp. 74-50,173 and K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,168; effective April 8, 2005.)

110-12-6. Contracts. Each written contract or agreement with a participant shall contain the warning notice specified in K.S.A. 74-50,169(b), and amendments thereto. This warning notice shall be printed in at least 10-point font. (Authorized by K.S.A. 2004 Supp. 74-50,173 and K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,169; effective April 8, 2005.)

**Article 13.—RURAL BUSINESS
DEVELOPMENT TAX CREDIT
PROGRAM**

110-13-1. Definitions. As used in these regulations, the following definitions shall apply: (a) “Act” means the rural business development tax credit program pursuant to K.S.A. 74-50,154, and amendments thereto.

(b) “Business support services” means business counseling, technical assistance, and business planning services provided to existing or prospective small businesses or entrepreneurs.

(c) “Department” means the department of commerce.

(d) “Entrepreneur” means an individual creating a new business, service, or product.

(e) “Fiscal year” means the 12-month period beginning July 1 and ending June 30.

(f) “Regional business development fund” means an authorized and audited fund that is created by taxpayer contributions, interest income, and investment income and is managed by the regional foundation board of directors for the purposes of economic and leadership development in the region.

(g) “Regional leadership development” means training and education that enable a region to develop community leadership that strengthens the economic and social environment in that region.

(h) “Secretary” means secretary of the department of commerce.

(i) “Small business” means an independently owned and operated business having fewer than 100 full-time equivalent employees.

(j) “Technology improvements” means a project that results in the ability of the region to enhance service in areas including broadband access, web site creation, wireless internet services, computer programming, computer servers, computer networks, computer databases, electronic training modules, electronic media, and any other technological areas deemed eligible by the secretary.

(k) “Utilization” means a regional foundation’s demonstrated ability to obtain enough qualifying contributions to fully use all tax credits allocated to the region during the period of time in which the tax credits were allocated to the regional foundation by the secretary. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 74-5005, K.S.A. 74-5007a, and K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-2. Designated regions. Each of

the following Kansas county groupings shall be designated as a region:

(a) “East central region” means Douglas, Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties.

(b) “North central region” means Chase, Clay, Cloud, Dickinson, Ellsworth, Geary, Jewell, Lincoln, Lyon, Marshall, Mitchell, Morris, Ottawa, Pottawatomie, Republic, Riley, Saline, Wabaunsee, and Washington counties.

(c) “Northeast region” means Atchison, Brown, Doniphan, Jackson, Jefferson, Nemaha, Osage, and Shawnee counties.

(d) “Northwest region” means Cheyenne, Decatur, Ellis, Grove, Graham, Logan, Norton, Osborne, Phillips, Rawlins, Rooks, Russell, Sheridan, Sherman, Smith, Thomas, Trego, and Wallace counties.

(e) “South central region” means Butler, Chautauqua, Cowley, Elk, Greenwood, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick, and Sumner counties.

(f) “Southeast region” means Allen, Anderson, Bourbon, Cherokee, Coffey, Crawford, Labette, Linn, Montgomery, Neosho, Wilson, and Woodson counties.

(g) “Southwest region” means Barber, Barton, Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Pratt, Rush, Scott, Seward, Stafford, Stanton, Stevens, and Wichita counties. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-3. Determination of regional foundations. (a) Within each region, agencies and organizations that exist primarily to engage in economic development activities on behalf of cities, counties, and multicounty areas shall propose one agency or organization among them as the regional foundation. The agency or organization that is the proposed regional foundation shall submit an application to the secretary, on a form provided by the department.

(b) The name, address, and occupation of each regional foundation board member shall be submitted to the secretary within 10 business days after the board is chosen.

(c) Each regional foundation shall provide documentation supporting at least one of the criteria specified in K.S.A. 74-50,154 and amendments thereto.

(d) Each regional foundation's board of directors shall oversee and determine the use of funds generated through contributions.

(e) Each regional foundation shall provide the secretary with the following information:

(1) Its investment philosophy, including how the regional foundation intends to target the funds generated through contributions towards specific industries, businesses, services, or products; and

(2) a written policy describing the criteria and procedures that the regional foundation intends to use to review and to approve or deny applications submitted to the foundation for the use of funds within the region.

(f) Each regional foundation shall provide the secretary with a list of projects that provide economic and leadership development appropriate for that region.

(g) If the agencies and organizations within a region are unable to propose a regional foundation pursuant to subsection (a), each agency or organization within the region requesting designation as the regional foundation shall submit the following information to the secretary for determination as to the designation of the regional foundation:

(1) The name, address, and history of the agency or organization and the manner in which the agency or organization qualifies pursuant to subsection (c);

(2) a list of the names and occupations of the board of directors who are proposed by the agency or organization;

(3) a history of the agency's or organization's economic development activities;

(4) the types of supporting proposals for funding that the agency or organization believes are best suited to the region and the supporting reasons;

(5) the reason that the agency or organization is best suited to lead and moderate economic development projects in the region;

(6) a description of the prior fund-raising capacity of the members of the agency or organization; and

(7) examples of community support within the region for the applicant's appointment as the regional foundation. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-4. Regional business development funds; eligible projects. (a) Each regional

foundation shall administer a regional business development fund.

(b) The sums generated by contributions to each regional business development fund shall be allocated according to the following provisions:

(1) No less than 60 percent may be allocated for job creation or retention.

(2) A maximum of 10 percent may be allocated towards the administrative cost of overseeing the project.

(3) The remaining funds may be allocated towards other eligible activities in a manner that fits the region's priorities and needs.

(c) Contributions to the fund shall be utilized by the regional foundation for one or more of the following projects:

(1) Business start-ups;

(2) business expansion;

(3) business retention;

(4) business support services;

(5) regional leadership development;

(6) technology improvements; and

(7) administrative services.

(d) All interest generated on idle funds administered for this program by the regional foundation shall be used by the foundation's board in a manner not inconsistent with this regulation.

(e) Any regional foundation may exceed the maximum percentages allowed for one or more eligible projects with the prior approval of the secretary. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 74-5005, as amended by L. 2005, ch. 104, sec. 9, and K.S.A. 74-5007a; effective Aug. 12, 2005; amended May 5, 2006.)

110-13-5. Allocation of tax credits. (a) Each regional foundation shall contract with the department for the foundation's utilization of tax credits through a tax credit agreement.

(b) Each regional foundation shall initially receive an equal share of the total amount of tax credits allocated in a given fiscal year.

(c) Each tax credit agreement shall be reviewed by the secretary on the anniversary date of the agreement to determine whether the regional foundation is utilizing its tax credits. The regional foundation shall attempt to achieve 100 percent utilization of the tax credits. Compliance with this level of utilization of tax credits shall be ascertained by the secretary through quarterly and annual reviews. (Authorized by K.S.A. 2004 Supp. 74-5002r and K.S.A. 2004 Supp. 74-50,154; im-

plementing K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-6. Reallocation of tax credits. (a) If the secretary determines that allocated tax credits are not being utilized in the manner specified in the regional foundation's approved proposal, the tax credits may be reallocated by the secretary to other regional foundations that have utilized all of the tax credits originally assigned to them.

(b) Tax credits may be reclaimed by the secretary, if the secretary determines that there is no specific use anticipated by a regional foundation for the foundation's remaining tax credits. A written notice shall be sent by the secretary to the regional foundation 30 days after the annual review of the tax credit agreement. The notice shall indicate the amount of unclaimed tax credits and instruct the foundation to submit a utilization schedule within 15 calendar days. Within 15 calendar days after the deadline for the foundation's response, a decision whether to reclaim the remaining tax credits from the regional foundation shall be made by the secretary.

(c) No regional foundation shall seek or take contributions for encumbering any reallocated tax credits until authorized in writing by the secretary. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,154(c)(5); effective Aug. 12, 2005.)

110-13-7. Appeals. Any regional foundation may appeal the reallocation of its tax credits, if the secretary's decision involves the reallocation of over 10 percent of the foundation's annual allocation of tax credits. Each appeal shall be submitted in writing to the secretary within 30 calendar days of notice of the reallocation, stating the reasons for the appeal and the course of action requested by the regional foundation to satisfy the deficiencies noted by the secretary in the notice. Each appeal shall be decided by the secretary within 15 calendar days of receipt of the appeal request. (Authorized by and implementing K.S.A. 2004 Supp. 74-5002r; effective Aug. 12, 2005.)

110-13-8. Progress reports. Each regional foundation shall submit quarterly progress reports concerning its projects to the secretary on or before January 10, April 10, July 10, and October 10 each year. A quarterly progress report shall be due even if no tax credit is utilized in that quarter. If a regional foundation does not submit these reports by the specified dates, the regional

foundation shall not take contributions from taxpayers for tax credits and shall not submit tax credit applications for processing by the department until the delinquent quarterly progress reports have been filed with the department. (Authorized by K.S.A. 2004 Supp. 74-5002r; implementing K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-9. Auditing. Each regional foundation receiving tax credits shall have an annual financial and compliance audit performed according to standard auditing procedures. Each audit shall be performed by an independent certified public accountant (CPA) who is licensed in Kansas. The audit report shall be submitted by the independent CPA to the secretary on or before February 28 each year. (Authorized by K.S.A. 2004 Supp. 74-5002r and K.S.A. 2004 Supp. 74-50,154; implementing K.S.A. 2004 Supp. 74-50,154; effective Aug. 12, 2005.)

110-13-10. Administration of contributions and regional business development fund. (a) Until the secretary approves each contribution from a taxpayer to the regional foundation as being eligible for tax credits, the regional foundation shall not consider, and the foundation shall not communicate to any taxpayer, that the contribution is entitled to a tax credit under this act.

(b) Each regional foundation being allocated tax credits shall open an account for the regional business development fund in a bank or other financial institution located in the state of Kansas that is insured by either the federal deposit insurance corporation (FDIC) or the national credit union share insurance fund (NCUSIF). The foundation shall deposit any funds related to each project in that account.

(c) Each contribution by taxpayers made to the regional foundation shall indicate that the contribution is to be allocated to the regional foundation's regional business development fund as specified in the regional foundation's approved proposal.

(d) Any regional foundation may amend its budget if the scope of work for the projects remains the same. Each amendment exceeding 10 percent of the regional foundation's total regional business development fund budget shall require the approval of both the regional foundation's board of directors and the secretary.

(e) When requesting contributions from indi-

viduals and businesses, the regional foundation shall not utilize tax credits in excess of the amount allocated by the secretary. (Authorized by K.S.A. 2006 Supp. 74-5002r and K.S.A. 2006 Supp. 74-50,154; implementing K.S.A. 2006 Supp. 74-50,154; effective Aug. 12, 2005; amended Nov. 26, 2007.)

**Article 13a.—ENTERPRISE
FACILITATION FUND**

110-13a-1. Definitions. As used in these regulations and for the purposes of administering the enterprise facilitation fund pursuant to K.S.A. 74-50,154 and amendments thereto, the following definitions shall apply:

(a) “Agreement” means the agreement by each EF group to use the EF funds as authorized by the secretary. This term shall include the reporting requirements regarding the actual expenditures of the funds and results of each project.

(b) “Community boards” means a local board of community volunteers that includes an executive board who manages the day-to-day business for each EF group.

(c) “Department” means the Kansas department of commerce.

(d) “Enterprise facilitation fund” and “EF fund” mean the fund created by K.S.A. 74-50,155(a) and amendments thereto.

(e) “Enterprise facilitation group” and “EF group” mean an entity recognized by the secretary that provides guidance to entrepreneurs and existing businesses.

(f) “Enterprise facilitation project” and “project” mean activities based on a plan developed by an EF group to help small communities develop new small businesses through entrepreneurs and to develop existing businesses so that the businesses can operate more efficiently or expand.

(g) “Entrepreneur” means an individual creating, organizing, or managing a new business or service.

(h) “Facilitator” means an individual hired by a community board to provide intensive, one-on-one management coaching and networking assistance, by linking entrepreneurs and small businesses to programs and resources offered by development organizations and professionals.

(i) “Fiscal agent” means the entity authorized by an EF group to administer funds on behalf of the EF group.

(j) “Fiscal year” means the 12-month period beginning July 1 and ending June 30.

(k) “Operating costs” means the day-to-day costs incurred by an EF group, including costs for salaries, travel, telephones, photocopiers, utilities, office equipment, and rent.

(l) “Secretary” means secretary of the department of commerce. (Authorized by and implementing K.S.A. 2007 Supp. 74-50,154 and 74-50,155; effective July 25, 2008.)

110-13a-2. Application requirements for enterprise facilitation project funding.

(a) Each enterprise facilitation group shall be notified by the department of the award amount available for each group within 15 business days following the deadline for the regional foundations to transfer the percentage of funds raised during the previous fiscal year as required by K.S.A. 74-50,154(c)(1), and amendments thereto. All such funds transferred to the department shall be awarded to the enterprise facilitation groups to be used for operating costs.

(b) To be eligible for funding from the enterprise facilitation fund, each enterprise facilitation group shall meet the following requirements:

(1) Submit the following to the secretary:

(A) An annual progress report; and

(B) The most recent quarterly progress reports; and

(2) enter into an agreement with the department.

(c) The agreement specified in paragraph (b)(2) shall state the intended use of the funds, the reporting requirements for the expenditure of funds, and the anticipated results of each project.

(d) Each eligible enterprise facilitation group shall receive an equal portion of the total funds transferred to the department pursuant to K.S.A. 74-50,154(c)(1), and amendments thereto. Funding shall be disbursed to each eligible enterprise facilitation group within 15 business days of execution of the agreement specified in this regulation. If an enterprise facilitation group ceases to exist or is otherwise not eligible for funding, that group’s unexpended or remaining or unused allocation shall be returned to the enterprise facilitation fund. That allocation shall then be divided equally among the remaining eligible enterprise facilitation groups. (Authorized by and implementing K.S.A. 2007 Supp. 74-50,154 and 74-50,155; effective July 25, 2008.)

110-13a-3. Reporting.

(a) Each enter-

prise facilitation group that receives funding under K.S.A. 74-50,154(c)(1), and amendments thereto, shall submit the following reports to the secretary:

(1) Quarterly progress reports, which shall be submitted on or before January 10, April 10, July 10, and October 10 of each year, on a form prescribed by the secretary. Each report shall contain the following information for that quarter:

(A) The number of new jobs created by the enterprise facilitation group;

(B) the number of new businesses created;

(C) the number of clients served; and

(D) the number of expanded businesses; and

(2) an annual report, which shall be submitted no later than 30 days after each transfer of funds as required by K.S.A. 74-50,154(c)(1), and amendments thereto. Each report shall contain the following information:

(A) For the past year, identification of each county participating in each project, the amount of funding contributed, and any anticipated changes in county participation;

(B) an overview of the EF group's activities during the past year;

(C) any anticipated challenges or concerns impacting each project over the next one to three years;

(D) a list of the perceived strengths of each project in terms of assisting entrepreneurs;

(E) any areas that the enterprise facilitation group desires to improve;

(F) the budget for the upcoming year; and

(G) a list of current executive board members and contact information.

(c) If a quarterly or annual progress report is not timely received, any future EF funds may be withheld by the secretary until the reporting requirements are met. (Authorized by and implementing K.S.A. 2007 Supp. 74-50,154; effective July 25, 2008.)

Article 14.—INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM ACT

110-14-1. Allocation of tax credit to program contributors. (a) The amount of the approved tax credit for each program contributor shall be certified by the department. A certification shall be sent by the department to the program contributor. The department of revenue shall be notified by the secretary of each certified

program contributor and of the amount of the approved tax credit for the program contributor.

(b) Each program contributor shall submit the certification specified in subsection (a) with the program contributor's tax return filed with the department of revenue. The tax credit shall be claimed for only the tax year in which the contribution was made. (Authorized by K.S.A. 2005 Supp. 74-50,203; implementing K.S.A. 2005 Supp. 74-50,208; effective Dec. 29, 2006.)

110-14-2. Tax credit. The maximum amount of tax credit that a community-based organization may receive each fiscal year shall not exceed \$100,000. However, if the aggregate amount of requests for tax credit by community-based organizations is less than \$500,000 as authorized by K.S.A. 74-50,208 and amendments thereto, additional tax credit may be awarded by the secretary to a qualified and previously approved community-based organization. (Authorized by K.S.A. 2005 Supp. 74-50,203; implementing K.S.A. 2005 Supp. 74-50,208; effective Dec. 29, 2006.)

Article 15.—KANSAS ENERGY DEVELOPMENT ACT; REFINERY AND EXPANDED REFINERY PROJECTS

110-15-1. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Act" means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(b) "Amortizable costs" means any costs depreciable under title 26 of the United States Code of 1986.

(c) "Capacity" means the estimated maximum volume, measured in gallons, of processed crude oil and petroleum products that has been or could be produced from an existing or restored refinery.

(d) "Construction" means the manifest commencement of actual operations on a project site, including erecting a building, excavating the ground, and any similar work that a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(e) "Department" means the Kansas department of commerce.

(f) "Expenditure" means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for en-

gineering and architectural services and for real and tangible personal property made for the construction of a new refinery, expansion of an existing refinery, or restoration of production of a refinery.

(g) “Out of production” means that no commercial crude oil processing or refinement into petroleum products has taken place five or more years before the date of an application submitted under the act.

(h) “Placed in service,” when used to describe a date, means the date on which an asset is placed into service. This date is considered to be when the asset is in a condition of readiness and availability for a specifically assigned function.

(i) “Project” means a new refinery, an expanded refinery, or a refinery whose production has been restored.

(j) “Qualified investment” has the meaning specified in K.S.A. 79-32,217, and amendments thereto. This term shall not include expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(k) “Real property” means land and real estate. This term shall include not only the land itself but also all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs, and wells.

(l) “Secretary” means the secretary of the Kansas department of commerce.

(m) “Tangible investment” means an investment in tangible personal or real property.

(n) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act. (Authorized by K.S.A. 2006 Supp. 74-5002r and K.S.A. 2006 Supp. 79-32,218, as amended by L. 2007, ch. 113, sec. 24; implementing K.S.A. 2006 Supp. 79-32,217, K.S.A. 2006 Supp. 79-32,218, as amended by L. 2007, ch. 113, sec. 24, and K.S.A. 2006 Supp. 79-32,220; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-15-2. Application; additional documentation. (a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department, to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed description of the project that is the subject of the application;

(2) a statement explaining how the proposed project meets the requirements set forth in the act;

(3) a project timeline and budget;

(4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;

(5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the entity’s proportion of ownership interest, which shall be expressed as a percentage of the project; and

(6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,218, as amended by L. 2007, ch. 113, sec. 24; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-15-3. Secretary’s review and determination. (a) Upon completion of the secretary’s review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-15-2, or both. If the secretary’s written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary’s determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the project. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,218, as amended by L. 2007, ch. 113, sec. 24; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-15-4. Annual compliance and audit. In order to be eligible for annual installments of

tax benefits available under the act, each taxpayer shall provide the secretary with all documentation necessary for the secretary to determine whether the taxpayer is in compliance with the agreement as required by K.S.A. 79-32,218, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the operation of the new, expanded, or restored refinery, including production records and any related documentation from which the secretary can determine whether the new, expanded, or restored refinery is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to the operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,218, as amended by L. 2007, ch. 113, sec. 24; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

Article 16.—KANSAS ENERGY DEVELOPMENT ACT; NEW QUALIFYING PIPELINE PROJECTS

110-16-1. Definitions. As used in these regulations, the following terms shall have the following meanings:

(a) “Access for state refineries” means that refineries or natural gas liquid processing facilities existing in Kansas before an application for benefits is submitted under the act shall have direct or indirect access through a mechanism to ensure the efficient transportation of crude or processed oil to the pipeline for which an application for tax benefits has been submitted.

(b) “Act” means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(c) “Amortizable costs” means any costs depreciable under title 26 of the United States Code of 1986.

(d) “Capacity” means the estimated maximum volume, measured in gallons, of crude oil or natural gas liquids that has been or could be transported from a pipeline located in this state.

(e) “Construction” means the manifest commencement of actual operations on a project site, including erecting a building, excavating the ground, and any similar work that a person with reasonable diligence can see and recognize as be-

ing done with the intention and purpose to continue work until the project is completed.

(f) “Department” means the Kansas department of commerce.

(g) “Expenditure” means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for engineering and architectural services and for real and tangible personal property made for the construction of a new qualifying pipeline.

(h) “Placed in service,” when used to describe a date, means the date on which an asset is placed into service. This date is considered to be when the asset is in a condition of readiness and availability for a specifically assigned function.

(i) “Project” means a new qualifying pipeline.

(j) “Qualified investment” has the meaning specified in K.S.A. 79-32,223, and amendments thereto. This term shall not include any expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(k) “Real property” means land and real estate. This term shall include not only the land itself but also all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs, and wells.

(l) “Secretary” means the secretary of the Kansas department of commerce.

(m) “Tangible investment” means an investment in tangible personal or real property.

(n) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act. (Authorized by K.S.A. 2006 Supp. 74-5002r and K.S.A. 2006 Supp. 79-32,224, as amended by L. 2007, ch. 113, sec. 25; implementing K.S.A. 2006 Supp. 79-32,223 and K.S.A. 2006 Supp. 79-32,224, as amended by L. 2007, ch. 113, sec. 25; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-16-2. Application; additional documentation. (a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department, to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed description of the project that is the subject of the application;

(2) a statement explaining how the proposed

project meets the requirements set forth in the act;

- (3) a project timeline and budget;
- (4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;
- (5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the proportion of ownership interest, which shall be expressed as a percentage of the project; and
- (6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,224, as amended by L. 2007, ch. 113, sec. 25; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-16-3. Secretary's review and determination. (a) Upon completion of the secretary's review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-16-2, or both. If the secretary's written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary's determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the project. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,224, as amended by L. 2007, ch. 113, sec. 25; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-16-4. Annual compliance and audit. In order to be eligible for annual installments of tax benefits available under the act, each taxpayer

shall provide the secretary with all documentation necessary for the secretary to determine whether the taxpayer is in compliance with the agreement as required by K.S.A. 79-32,224, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the operation of the new qualifying pipeline, including production records and any related documentation from which the secretary can determine whether the new qualifying pipeline is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,224, as amended by L. 2007, ch. 113, sec. 25; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

Article 17.—KANSAS ENERGY DEVELOPMENT ACT; INTEGRATED COAL OR COKE GASIFICATION NITROGEN FERTILIZER PLANTS

110-17-1. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Act" means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(b) "Amortizable costs" means any costs depreciable under title 26 of the United States Code of 1986.

(c) "Availability of Kansas coal" means that amount of coal from Kansas that, at the secretary's discretion, is available for use in an economically practicable manner in an integrated coal gasification nitrogen fertilizer plant.

(d) "Capacity" means the amount of nitrogen fertilizer, measured in pounds, that has been or could be produced from an existing coal or coke gasification nitrogen fertilizer plant.

(e) "Construction" means the manifest commencement of actual operations on a project site, including erecting a building, excavating the ground, and any similar work that a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(f) "Department" means the Kansas department of commerce.

(g) “Expenditure” means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for engineering and architectural services and for real and tangible personal property made for the construction of an existing coal or coke gasification nitrogen fertilizer plant or a new integrated coal or coke gasification nitrogen fertilizer plant.

(h) “Placed in service,” when used to describe a date, means the date on which an asset is placed into service. This date is considered to be when the asset is in a condition of readiness and availability for a specifically assigned function.

(i) “Project” means a new integrated coal or coke gasification nitrogen fertilizer plant or the expansion of an existing integrated coal or coke gasification nitrogen fertilizer plant.

(j) “Qualified investment” has the meaning specified in K.S.A. 79-32,228, and amendments thereto. This term shall not include any expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(k) “Real property” means land and real estate. This term shall include not only the land itself but also all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs, and wells.

(l) “Secretary” means the secretary of the Kansas department of commerce.

(m) “Tangible investment” means an investment in tangible personal or real property.

(n) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act.

(o) “Tipple” means a structure where coal is cleaned and loaded in railroad cars or trucks or any other form of transportation. (Authorized by K.S.A. 2006 Supp. 74-5002r and K.S.A. 2006 Supp. 79-32,229, as amended by L. 2007, ch. 113, sec. 26; implementing K.S.A. 2006 Supp. 79-32,228, K.S.A. 2006 Supp. 79-32,229, as amended by L. 2007, ch. 113, sec. 26, and K.S.A. 2006 Supp. 79-32,231; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-17-2. Application; additional documentation. (a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department, to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed de-

scription of the project that is the subject of the application;

(2) a statement explaining how the proposed project meets the requirements set forth in the act;

(3) a project timeline and budget;

(4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;

(5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the proportion of ownership interest, which shall be expressed as a percentage of the project; and

(6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,229, as amended by L. 2007, ch. 113, sec. 26; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-17-3. Secretary’s review and determination. (a) Upon completion of the secretary’s review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-17-2, or both. If the secretary’s written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary’s determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the project. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,229, as amended by L. 2007, ch. 113, sec. 26; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-17-4. Annual compliance and audit.

In order to be eligible for annual installments of tax benefits available under the act, each taxpayer shall provide the secretary with all documentation necessary for the secretary to determine whether the taxpayer is in compliance with the agreement as required by K.S.A. 79-32,229, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the operation of the new, expanded, or integrated coal or coke gasification nitrogen fertilizer plant, including production records and any related documentation from which the secretary can determine whether the new, expanded, or integrated coal or coke gasification nitrogen fertilizer plant is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to the operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,229, as amended by L. 2007, ch. 113, sec. 26; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

**Article 18.—KANSAS ENERGY
DEVELOPMENT ACT; BIOMASS TO
ENERGY PROJECTS**

110-18-1. Definitions. As used in these regulations, the following terms shall have the following meanings:

(a) “Act” means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(b) “Amortizable costs” means any costs depreciable under title 26 of the United States Code of 1986.

(c) “Capacity” means the estimated amount, measured in gallons or British thermal units or their equivalent, that has been or could be produced from an existing or new biomass-to-energy plant.

(d) “Construction” means the manifest commencement of actual operations on a project site, including erecting a building, excavating the ground, and similar work that a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(e) “Department” means the Kansas department of commerce.

(f) “Expenditure” means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for engineering and architectural services and for real and tangible personal property made for the construction of a new biomass-to-energy plant or the expansion of an existing biomass-to-energy plant.

(g) “Placed in service,” when used to describe a date, means the date on which an asset is placed into service. This date is considered to be when the asset is in a condition of readiness and availability for a specifically assigned function.

(h) “Project” means a new or expanded biomass-to-energy plant.

(i) “Qualified investment” has the meaning specified in K.S.A. 79-32,233, and amendments thereto. This term shall not include any expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(j) “Real property” means land and real estate. This term shall include not only the land itself but also all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs, and wells.

(k) “Secretary” means the secretary of the Kansas department of commerce.

(l) “Tangible investment” means an investment in tangible personal or real property.

(m) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act. (Authorized by K.S.A. 2006 Supp. 74-5002r and K.S.A. 2006 Supp. 79-32,234, as amended by L. 2007, ch. 113, sec. 28; implementing K.S.A. 2006 Supp. 79-32,233, as amended by L. 2007, ch. 113, sec. 27, K.S.A. 2006 Supp. 79-32,234, as amended by L. 2007, ch. 113, sec. 28, and K.S.A. 2006 Supp. 79-32,236; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-18-2. Application; additional documentation.

(a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department, to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed description of the project that is the subject of the application;

(2) a statement explaining how the proposed project meets the requirements set forth in the act;

- (3) a project timeline and budget;
- (4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;
- (5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the proportion of ownership interest, which shall be expressed as a percentage of the project; and

(6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,234, as amended by L. 2007, ch. 113, sec. 28; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-18-3. Secretary's review and determination. (a) Upon completion of the secretary's review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-18-2, or both. If the secretary's written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary's determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the project. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,234, as amended by L. 2007, ch. 113, sec. 28; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

110-18-4. Annual compliance and audit. In order to be eligible for annual installments of tax benefits awarded under the act, each taxpayer shall provide the secretary with all documentation necessary for the secretary to determine whether

the taxpayer is in compliance with the agreement as required by K.S.A. 79-32,234, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the operation of the new or expanded biomass-to-energy plant, including production records and any related documentation from which the secretary can determine whether the new or expanded biomass-to-energy plant is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to the operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2006 Supp. 79-32,234, as amended by L. 2007, ch. 113, sec. 28; effective, T-110-10-10-07, Oct. 10, 2007; effective Dec. 21, 2007.)

Article 19.—KANSAS ENERGY DEVELOPMENT ACT; RENEWABLE ELECTRIC COGENERATION FACILITY PROJECTS

110-19-1. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Act" means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(b) "Amortizable costs" means any costs depreciable under title 26 of the United States Code of 1986.

(c) "Construction" means the manifest commencement of actual operations at a new renewable electric cogeneration facility site, including erecting a building, excavating the ground, installing equipment, and any similar work that a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(d) "Department" means the Kansas department of commerce.

(e) "Expenditure" means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for engineering and architectural services and for real and tangible personal property made for the construction of a new renewable electric cogeneration facility.

(f) "Industrial, commercial, or agricultural pro-

cess” means any activity conducted for a profit and primarily involved with any of the following:

(1) The manufacturing process resulting in the making of a product suitable for use;

(2) the retail, wholesale, or other distribution of a product or service;

(3) the practice of cultivating the soil, producing crops, or raising livestock; or

(4) the preparation and marketing of the products resulting from any activity specified in paragraph (f)(1), (2), or (3).

(g) “Operation” means the use of equipment to produce electricity resulting in the displacement of current electrical use or providing for future electrical use.

(h) “Placed in service,” when used to describe a date, means the date on which a new renewable electric cogeneration facility is placed into service. This date is considered to be when the new renewable electric cogeneration facility is in a condition of readiness and availability for its specifically assigned function.

(i) “Project” means a new renewable electric cogeneration facility, as defined in K.S.A. 79-32,245 and amendments thereto.

(j) “Qualified investment” has the meaning specified in K.S.A. 79-32,245, and amendments thereto. This term shall not include expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(k) “Real property” means land and real estate. This term shall include not only the land itself but also all buildings, fixtures, and improvements.

(l) “Renewable energy resources technologies” has the meaning specified in K.S.A. 79-201, and amendments thereto.

(m) “Secretary” means the secretary of the Kansas department of commerce.

(n) “Tangible investment” means an investment in tangible personal or real property.

(o) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act. (Authorized by K.S.A. 2007 Supp. 74-5002r and K.S.A. 2007 Supp. 79-32,246; implementing K.S.A. 2007 Supp. 79-32,246, K.S.A. 2007 Supp. 79-32,247, and K.S.A. 2007 Supp. 79-32,248; effective July 25, 2008.)

110-19-2. Application; additional documentation. (a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department,

to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed description of the project that is the subject of the application;

(2) a statement explaining how the proposed project meets the requirements set forth in the act;

(3) a project timeline and budget;

(4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;

(5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the entity’s proportion of ownership interest, which shall be expressed as a percentage of the project; and

(6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,246; effective July 25, 2008.)

110-19-3. Secretary’s review and determination. (a) Upon completion of the secretary’s review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-19-2, or both. If the secretary’s written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary’s determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the

project. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,246; effective July 25, 2008.)

110-19-4. Annual compliance and audit.

In order to be eligible for annual installments of tax benefits available under the act, each taxpayer shall provide the secretary with all documentation necessary for the secretary to determine whether the taxpayer is in compliance with the agreement as required by K.S.A. 79-32,246, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the operation of the new renewable electric cogeneration facility, including production records and any related documentation from which the secretary can determine whether the new renewable electric cogeneration facility is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to the operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,246; effective July 25, 2008.)

Article 20.—KANSAS ENERGY DEVELOPMENT ACT; STORAGE AND BLENDING EQUIPMENT PROJECTS

110-20-1. Definitions. As used in these regulations, the following terms shall have the following meanings:

(a) “Act” means the Kansas energy development act, K.S.A. 79-32,216 et seq., and amendments thereto.

(b) “Amortizable costs” means any costs depreciable under title 26 of the United States Code of 1986.

(c) “Blended fuel” means a blend of petroleum-based fuel and at least 10 percent of any of the following:

- (1) Biodiesel;
- (2) ethanol (ethyl alcohol); or
- (3) any other biofuel.

(d) “Construction or installation” means the manifest commencement of work on a project site, including either of the following:

- (1) Performing any of the following at a fuel terminal, refinery, or biofuel production plant:
 - (A) Erecting a building;
 - (B) excavating the ground; or
 - (C) affixing storage and blending equipment; or

(2) performing any similar work that a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(e) “Department” means the Kansas department of commerce.

(f) “Expenditure” means any cost incurred in the normal course of business to generate revenues. This term shall include expenditures for engineering and architectural services and for real and tangible personal property made for the purchase, construction, or installation of storage and blending equipment.

(g) “Operation” means the use of storage and blending equipment to produce biofuels for distribution into the wholesale or retail markets.

(h) “Placed in service,” when used to describe a date, means the date on which storage and blending equipment is placed into service. This date is considered to be when the storage and blending equipment is in a condition of readiness and availability for a specifically assigned function.

(i) “Project” means the construction or installation of storage and blending equipment at a fuel terminal, refinery, or biofuel production plant.

(j) “Qualified investment” has the meaning specified in K.S.A. 79-32,251, and amendments thereto. This term shall not include any expenditures financed, in whole or in part, by public funds or grants or by any similar type of financial assistance.

(k) “Secretary” means the secretary of the Kansas department of commerce.

(l) “Tangible investment” means an investment in tangible personal or real property.

(m) “Taxpayer” means an applicant for tax benefits or a recipient of tax benefits under the act. (Authorized by K.S.A. 2007 Supp. 74-5002r and K.S.A. 2007 Supp. 79-32,252; implementing K.S.A. 2007 Supp. 79-32,251 and K.S.A. 2007 Supp. 79-32,252; effective July 25, 2008.)

110-20-2. Application; additional documentation. (a) Each taxpayer that desires to obtain tax benefits under the act shall submit an application, on a form provided by the department, to the secretary for a determination of whether the taxpayer’s project qualifies for tax benefits under the act. Each application shall include the following:

(1) Documentation including a detailed description of the project that is the subject of the application;

(2) a statement explaining how the proposed project meets the requirements set forth in the act;

(3) a project timeline and budget;

(4) adequate documentation that the taxpayer has satisfied the requirements set forth in the act;

(5) a statement describing in detail the ownership structure of the project, including the name of each legal entity and the proportion of ownership interest, which shall be expressed as a percentage of the project; and

(6) any other relevant information required by the secretary to determine the eligibility of the taxpayer for tax benefits under the act.

(b) If any of the items specified in subsection (a) are not included or if the secretary requires additional information, the taxpayer shall be notified about the items or information required to be provided to the secretary before the secretary can make a determination on the eligibility of the taxpayer for tax benefits under the act. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,252; effective July 25, 2008.)

110-20-3. Secretary's review and determination. (a) Upon completion of the secretary's review of each application for tax benefits under the act, each taxpayer on whose behalf the application was submitted shall receive a written response containing a determination on the application or seeking further information.

(b) A determination on each application for tax benefits under the act shall be made by the secretary within 60 days of receipt of the information required by the act or K.A.R. 110-20-2, or both. If the secretary's written response seeks further information, the 60-day time frame established in this subsection shall be suspended beginning on the date on which the letter seeking additional information is mailed and through the date on which the additional information is received by the secretary.

(c) A copy of the secretary's determination shall be mailed to each taxpayer identified on the application as having an ownership interest in the project. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,252; effective July 25, 2008.)

110-20-4. Annual compliance and audit. In order to be eligible for annual installments of tax benefits available under the act, each taxpayer shall provide the secretary with all documentation necessary for the secretary to determine whether the taxpayer is in compliance with the agreement

as required by K.S.A. 79-32,252, and amendments thereto, and any other requirements under the act. This documentation shall include the following:

(a) Records documenting the use of the storage and blending equipment to produce biofuels for distribution into the wholesale or retail markets, including production records and any related documentation from which the secretary can determine whether the storage and blending equipment is in operation; and

(b) one copy of each pertinent federal tax return, state tax return, tax schedule, and any related documentation pertaining to operation of any facility for which tax benefits are sought pursuant to the act. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,252; effective July 25, 2008.)

Articles 21 to 39.—RESERVED

Article 40.—KANSAS EXPORT FINANCE ACT

110-40-1. Definitions. (a) "Department" means the Kansas department of commerce.

(b) "Review committee" means the Kansas export loan guarantee review committee within the department.

(c) "Director's office" means the office of the export finance director, within the trade development division of the department.

(d) "Eximbank" means the Export-Import Bank of the United States.

(e) "Exporter" means a business concern, incorporated or unincorporated, which sells, leases, or proposes to sell or lease Kansas goods or services destined for shipment, resale, or use outside the United States.

(f) "Financial assistance" means insurance, co-insurance, reinsurance, or guarantees for loans or credits extended to an exporter for pre-export credit needs or post-export credit needs or both.

(g) "Kansas goods or services" means goods or services manufactured, processed, or originated in Kansas or which contain substantial Kansas-source components, labor, or intellectual property. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071, effective Oct. 8, 1990.)

110-40-2. Availability and form of financial assistance from the Kansas department of commerce. (a) Financial assistance shall be

available from the department to support the pre-export credit needs or post-export credit needs or both of exporters with respect to Kansas export transactions where:

(1) credit or loans may otherwise not be made available;

(2) there are reasonable risks; and

(3) there is sufficient likelihood of repayment.

(b) Financial assistance may be in the form of insurance, co-insurance, reinsurance, or guarantee of a loan or the credit extended to exporters by Kansas financial institutions. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071 and 74-5073; effective Oct. 8, 1990.)

110-40-3. Application content. Application forms shall be available from the director's office for use by exporters or lenders in seeking financial assistance. The application forms shall set forth the information necessary for the determination of the eligibility of a Kansas export transaction for financial assistance and shall require, among other things: (a) with respect to the exporting company:

(1) a description and history of the exporting company;

(2) a resume of management experience; and

(3) financial statements;

(b) with respect to the underlying Kansas export transaction:

(1) a description of the products to be manufactured or processed, or services to be supplied, or both;

(2) a description of the Kansas content of the products or services;

(3) an estimate of additional employment that will occur as a result of the transaction;

(4) the destination of the products or services, or both;

(5) income and expense projections;

(6) a description of the foreign purchaser and the past experience of the exporter with the foreign purchaser; and

(7) an outline of the expected commercial terms of sale and proposed terms of payment; and

(c) with respect to the loan:

(1) the dollar amount;

(2) the term;

(3) the interest rate;

(4) the banking fees; and

(5) a description of collateral and other security.

Any additional information necessary to make a determination and which is reasonably related to the criteria for approval in KAR 110-40-5 and KAR 110-40-6 may be required by the director's office. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071, 74-5072, and 74-5073; effective Oct. 8, 1990.)

110-40-4. Application procedure. (a) Application forms. The completed application forms with all required exhibits and attachments shall be submitted to the director's office.

(b) Application fee. An application fee as provided in K.S.A. 1989 Supp. 74-5072(c) shall be paid by certified check payable to the department. The certified check shall accompany the completed application form submitted to the director's office. The fee shall not be refundable.

(c) Initial review and consideration by the director's office. The application shall be reviewed by the director's office for completeness and the applicant shall be notified of any additional information required. When all required information has been received, the application shall be evaluated taking into account the purposes of the Kansas export finance act and the criteria and terms of KAR 110-40-5 and KAR 110-40-6. The application shall then be submitted by the director's office to the review committee together with the recommendation of the director's office for approval or denial.

(d) Denial of application. If the application is disapproved by the review committee, the applicant shall be notified by the director's office in writing of the reasons for denial.

(e) Approval of application. If the application is approved by the review committee, the applicant shall be notified by the director's office in writing.

(f) Misrepresentation by applicant. Any application may be rejected, any notice of approval may be revoked, or closure on the loan may be refused by the director's office if any information provided by the applicant contains a material misrepresentation or omission. Each applicant shall have an affirmative and continuing duty to update and correct all information provided to the director's office or to the lender. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071, 74-5072, and 74-5073; effective Oct. 8, 1990.)

110-40-5. General terms and conditions of financial assistance. (a) Permissible use of fi-

nancial assistance. Guaranteed loan funds may be used by the exporter to satisfy credit needs with respect to Kansas export transactions. Eligible credit needs include the costs and expenses related to the acquisition or production, financing, and shipment of the goods and services.

(b) Participation. In providing financial assistance, participation from other private and governmental sources, including the United States small business administration, eximbank, the foreign credit insurance association, and private insurers may be sought by the department.

(c) Maximum amount of financial assistance. The department's net exposure for financial assistance to a Kansas export transaction shall not, at any one time, exceed 50 percent of the export loan guarantee fund balance.

(d) Security. Loans may require collateralization of a type, amount, and value which, considered with the other criteria described in K.A.R. 110-40-6, affords reasonable assurance of repayment.

(e) Reporting requirements.

(1) The lender shall report in writing to the director's office as provided in the guarantee agreement and as provided in K.A.R. 110-40-7, loan administration and servicing.

(2) The exporter shall report to the director's office immediately upon making shipment of the goods and shall provide copies of documents evidencing shipment according to the terms of trade. In addition the exporter shall report immediately the receipt of payment of the Kansas export transaction receivable. If requested by the director's office, the exporter shall submit other reports or documentation reasonably related to an assessment of the exporter's compliance with the Kansas export finance act. (Authorized by K.S.A. 74-5071, K.S.A. 74-5072, as amended by 1994 HB 2971; implementing K.S.A. 74-5071, 74-5072 and K.S.A. 74-5074; effective Oct. 8, 1990; amended Sept. 19, 1994.)

110-40-6. Criteria for approval of financial assistance. (a) Need for financial assistance. A need for financial assistance shall be deemed to exist where credit or loans are otherwise not available for Kansas export transactions. In evaluating the availability of credit or loans the following factors shall be taken into consideration by the department:

(1) Exporter's resources. Consideration shall be given to whether the desired financing appears

available, in whole or in part, to the exporter on reasonable terms based upon its own resources, including the exporter's bank credit lines, issuance of new capital, sale of assets at a fair price, and the personal credit or other resources of the owners and principal shareholders of the exporter.

(2) Alternative sources of assistance. Consideration shall also be given to whether the requested financial assistance appears available, in whole or in part, through other governmental sources such as the United States small business administration or eximbank. The exporter may be directed to these sources or to seek coparticipation from these sources, as appropriate, prior to further consideration of the application.

(b) Reasonable risk and likelihood of repayment. Financial assistance shall only be available for loans which represent reasonable risks and which have a sufficient likelihood of repayment. In making these judgements, the following factors shall be considered by the department:

(1) the credit history and financial condition of the exporter;

(2) the collateral and other sources of guarantee or insurance securing the loan or credit;

(3) the terms of the sale and projected earnings from the Kansas export transaction;

(4) the capacity of the exporter to perform commercially, especially in accordance with the commercial terms and conditions of the Kansas export transaction;

(5) the security of the payment terms of the Kansas export transaction, to the extent that the exporter's loan repayment is dependent upon collection of the foreign receivable; and

(6) the lender's ability to evaluate, perform, and service the loan or credit, to make reports as required by these rules, and to collect the loan upon default.

(c) The limits in K.S.A. 1989 Supp. 74-5072(a). The criteria for approval of financial assistance shall include the percentage limitations in K.S.A. 1989 Supp. 74-5072 (a). (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071, 74-5072, 74-5073, and 74-5074; effective Oct. 8, 1990.)

110-40-7. Loan administration and servicing. (a) The lender shall perform, administer, and service the loan in accordance with customary and prudent commercial banking practices and in accordance with the terms of all agreements between lender and exporter related to the loan.

(b) The lender shall maintain, and upon request, make available to the department all documents relating to the loan.

(c) The lender shall obtain from exporter the loan security and shall take all necessary action to perfect the security interests.

(d) The lender shall preserve and protect the interest of the lender and the department in the loan and loan security in accordance with customary and prudent commercial banking practices.

(e) The lender shall immediately notify the exporter of any past due payments. If the exporter fails to cure the nonpayment within 30 days, the lender shall notify the director's office and confer regarding action to be taken in servicing and collecting the export loan and pursuing the export loan security. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071 and 74-5074; effective Oct. 8, 1990.)

110-40-8. Guarantee agreement. (a) A guarantee agreement between the department

and the lender shall be prepared by the director's office.

(b) The guarantee agreement shall contain two parts consisting of:

(1) a set of general terms and conditions which will be applicable to all Kansas export transactions; and

(2) an attachment to the general terms and conditions designed to identify the *specific* terms and conditions of each individual transaction.

(c) A guarantee fee as provided in K.S.A. 1989 Supp. 74-5072(c) shall be paid by the lender to the department. The fee shall not be refundable and shall be paid:

(1) not less than five business days from execution of the guarantee agreement by the secretary of commerce; or

(2) not later than the date of the first disbursement under the guaranteed loan, whichever is earlier. (Authorized by K.S.A. 1989 Supp. 74-5071; implementing K.S.A. 1989 Supp. 74-5071, 74-5072; effective Oct. 8, 1990.)